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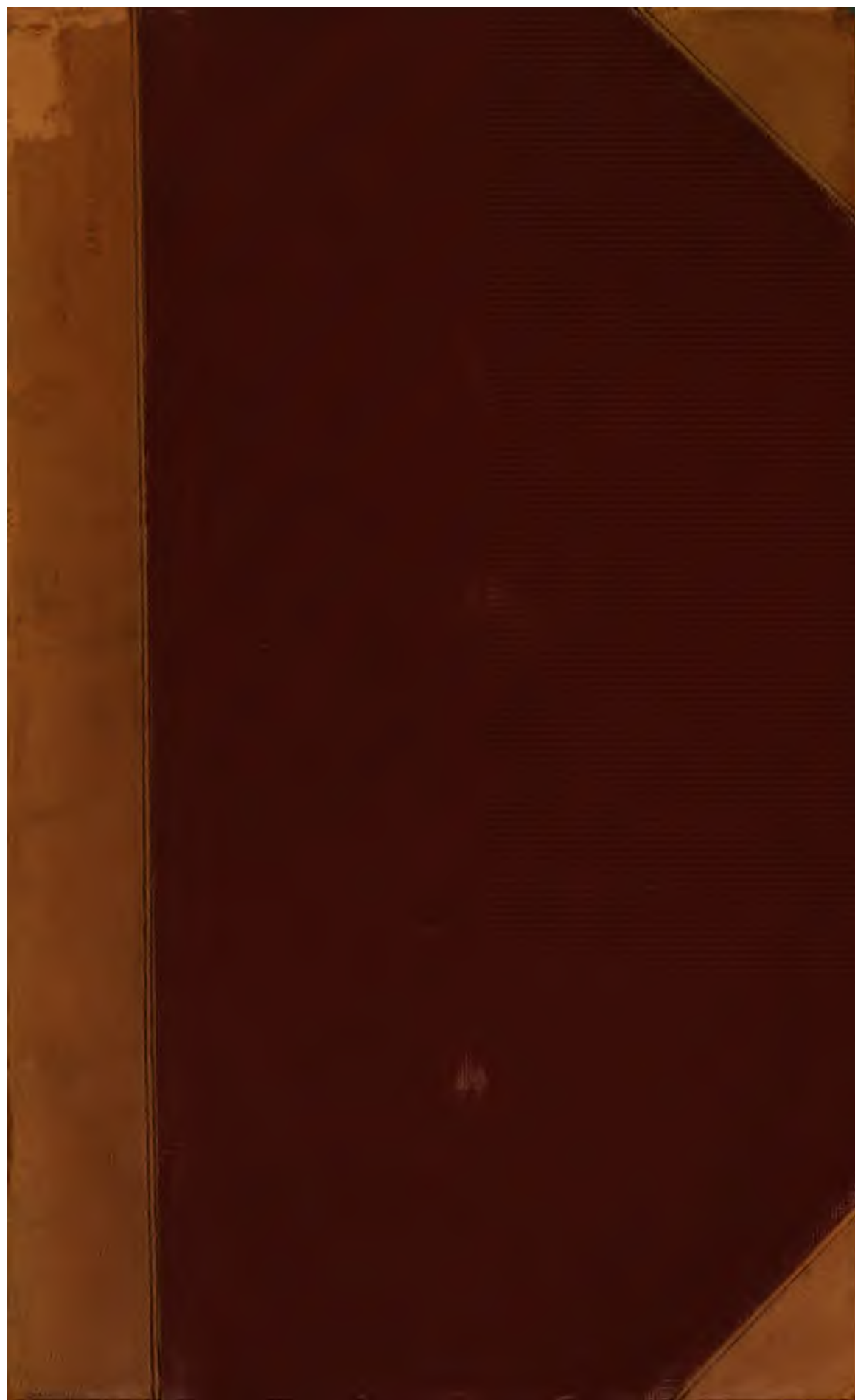
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THE  
**LEGAL OBSERVER,**

OR

**JOURNAL OF JURISPRUDENCE.**

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**PUBLISHED WEEKLY.**

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**MAY TO OCTOBER 1839,**  
**INCLUSIVE.**

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—“*Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.*”

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**HORAT.**

**VOL. XVIII.**

**LONDON:**

**PUBLISHED FOR THE PROPRIETORS BY**

**EDMUND SPETTIGUE,**

**LAW BOOKSELLER AND PUBLISHER, 67, CHANCERY LANE;**

**AND SOLD BY SHERWOOD AND CO., PATERNOSTER ROW;**

**ADAM AND CHARLES BLACK, EDINBURGH;**

**AND HODGES AND SMITH, DUBLIN.**

**1839.**

59.476

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# The Legal Observer.

SATURDAY, MAY 4, 1839.

— "Quod magis ad nos  
Pertinet, et noscire malum est, agitamus.

HORAT.

## PROFESSIONAL PROSPECTS.

We have long been in the habit, some time in the month of May, of saying a few words to our readers as to their general prospects; and as we are fond of keeping up old customs, we shall not allow the present occasion to pass by, without very briefly availing ourselves of it.

We cannot compliment the profession on its present state: it is without doubt unsettled and unsatisfactory. There is hardly a court of justice in the country to which unqualified praise can be awarded, or in which some alteration is not proposed. The Courts of Chancery: can they remain as they are? No one can allow it. The Courts of Common Law: how do they stand? Surely not as we would wish to see them. The Court of Queen's Bench overloaded with business; the other courts under-worked. The Court of Bankruptcy:—where is that ill-fated remnant? The Police Courts? the Small Debt Courts? From the highest to the lowest, there is little to give the suitor confidence in the settled administration of justice. We greatly regret the present state of the public business in Parliament, on behalf both of the community and the profession. Amidst the perpetual strife of party, not only is the work of amelioration impeded, but the general confidence is shaken in the tribunals of the country. It is impossible to tell which of the numerous and important legal reforms now before parliament, may pass into a law. The government proposes no relief to the suitor in Equity, and of the other measures which have been brought in, relating to the law, no one can surely predict the fate, or even ascertain with certainty the real desires or intentions of their pro-

moters. The Police bills are fixed for days on which they cannot come on. The County Courts Bill is deferred from week to week. The Registration of Voters Bill is served up cold on a succession of Wednesdays, which is a sufficient notice to all that it is wished to keep it in reserve.

This state of things not only prevents these bills making progress, but it deprives independent members of their proper turn as to the bills not in the charge of the government. Serjeant Talfourd, and Sir F. Pollock, Mr. Stewart, and others have been labouring from the beginning of the session to bring on their several bills, and our weekly list will shew with what success. A striking illustration of this occurred on Wednesday last, on the Copyright Bill, when the whole night was consumed in a vain attempt to proceed with the bill; and a little knot of members, rarely exceeding twelve in number, effectually obstructed the progress of this measure—thus forming a precedent for cutting out the only night in the week open to members unconnected with the government from the discussion of any bills that are opposed. The consequence of this is that the session runs on, parliament gets weary of doing nothing, and bills are either given up or passed in a slovenly manner.

In the mean time work is being cut out for the future. The bills founded on the reports of the Real Property Commissioners, will soon make their appearance, and the report of the Rural Police Commissioners will furnish some further materials for legislation, and yet three months of the session have elapsed, and nothing has been done.

So far the prospect is unsatisfactory; let us hope that it may be brighter when we next recur to it.

## PRACTICAL POINTS OF GENERAL INTEREST.

## PENSION BY EAST INDIA COMPANY.

WE lately collected the cases relating to the right to half pay and pensions, with respect to the power to assign them (See 13 L. O. 369.) In a recent case the question has been discussed with reference to the assignability of the retiring pension of a military officer of the East India Company, such person having become a bankrupt. The general rule of law, was admitted on both sides, that no action founded on contract can be maintained against a corporation aggregate unless when such contract is under the seal of the corporation; for "the common seal is the hand and mouth of the corporation." *Res v. Bigg*, 3 P. Wms. 423. But exceptions have been grafted on this rule, "so that it is now undoubted law that in very many cases actions are maintainable in our courts upon contracts entered into by or on behalf of corporations aggregate, though such contracts are not under seal." *Per Tindal, C. J.*, 5 Bing. N. C. 269. These exceptions, however, have never carried the rule further than this: that when a company is instituted for the purposes of trade, such company may in matters of frequent requirement and of small amount, make a valid contract relating to the trade which they carry on, without affixing the common seal, although such corporation be a corporation aggregate without a head. *Beverley v. Lincoln Gas and Coke Company*, 6 Adol. and Ell. 829. Thus a company created by act of parliament for the supply of gas may contract for gas meters, for the purposes of their trade without seal, and upon such contract may be held liable in an action of assumpsit for goods sold and delivered. And again, a company so instituted may be liable upon a similar contract not under seal, although the contract be not executed, but executory only; as was determined in the case of *Church v. Imperial Gas Light Company*, 6 Adol. and Ellis 846; and indeed the same principle—that a corporation established for the purpose of carrying on trade or manufacture may differ from other corporate bodies, as to the power of contracting in matters relating to the purposes for which the company was formed—seems also to have been the opinion of Lord *Tenderden*, as may be collected from his judgment in *Dunstan v. Imperial Gas Light Company*, 3 Barn. and Adol. 131.

In deciding the particular point at issue, *C. J. Tindal*, after taking a review of the acts establishing the East India Company, thus proceeded:—

"The grant in question appears to us to range itself under that class of obligations which is described by jurists as imperfect obligations; obligations which want the "*vinculum juris*," although binding in moral equity and conscience, to be a grant which the East India Company, as governors, are bound in *foro conscientie* to make good, but of which the performance is to be sought for by petition,

memorial, or remonstrance, not by action in a court of law. Many grounds of inexpediency in allowing a claim of the present description to be recoverable in a court of law readily suggest themselves. If the retired pension which is given for former services can be recovered by action, why should not the pay and allowances for actual service be equally so during their continuance? And yet how frequently is it not only expedient, but absolutely necessary that military pay should be suspended and kept in arrear beyond the day when it becomes due, and until the service, in respect of which it is earned, has been entirely completed? not to mention the expense and inconvenience which must arise if a suit might be instituted by each individual officer, and the prejudice which such litigation would necessarily occasion to the military service. But if the allowance of this pension will furnish a ground of action against the company, no legal distinction can be assigned why the grant of pay during actual service, which is authorised by general orders founded on resolutions of the directors, confirmed in the same manner by the board of commissioners, should not be equally the ground of an action at law. It is enough, however, to say that though the company undoubtedly might, if they had thought proper, have made a grant under their common seal for the payment of this pension, by which they would have rendered themselves liable to an action in a court of law, yet they have not so done; and it appears to us that this grant, not under seal, does not fall within the reason or principle of the exception which has been above adverted to; and, consequently, that it must be governed by the general rule of law, that a corporation aggregate cannot be sued upon a contract not being under their common seal. We therefore think the bankrupt himself could not have had a right of action against the company; and that, consequently, no such right has passed to his assignees, and therefore we give judgment of nonsuit.—*Gibson v. East India Company*, 5 Bing. N. C. 262.

## THE COPYHOLD ENFRANCHISEMENT BILL.

WE propose, on the present occasion, to devote some space to a more full explanation of the Copyhold Enfranchisement Bill. We printed it when it was first introduced (17 L. O. 353), but it has since undergone some modifications; and the importance of the subject will, perhaps, justify our recurrence to it, especially as it is now exciting much interest.

The first ten clauses relate to the appointment of the commissioners by whom the bill, if passed, is to be carried into execution. These are to be the present Tithe Commissioners, who are authorized to appoint a requisite number of assistant com-

missioners, and a secretary, who are to receive the same remuneration as under the Tithe Commutation Act. The advantages of employing this board for the purpose of carrying out enfranchisements, are very considerable. They have a machinery ready made, and now in activity, competent to deal with all questions likely to arise under it, whether of law or value. The additional burden to the public will be trifling; and a tribunal may thus be referred to which has already acquired general confidence.

The bill next provides for the ownership of the crown; and the manors thus vested are to be dealt with in the same manner as others; and where either lords or tenants are under disabilities, the guardian, trustee, &c. may act for them: "or in default thereof, such person as may be nominated for that purpose by the commissioners." An agent may also be appointed by any lord or tenant, or other person interested in enfranchisement; and by a subsequent section the power of attorney for this purpose is exempted from stamp duty.

These preliminary clauses being disposed of, the bill provides for three modes of enfranchisement:—1. A voluntary enfranchisement of whole manors under the direction of the Tithe Commissioners. 2. A voluntary enfranchisement by a lord and one or more tenants of a manor, independent of the Tithe Commission. And 3. A compulsory enfranchisement under the direction of the Tithe Commissioners. And it is to be observed that the bill has been so drawn that the compulsory clauses may be struck out if it were seen fit, and the bill may be confined to facilitating voluntary enfranchisements.

Let us proceed, therefore, to give some account of the voluntary enfranchisements of manors. Any lord or tenant or tenants, whose interest shall not be less than one fourth of the annual value of the manor or lands, may call a meeting of the lords and tenants; and the lords and tenants who shall be present at any such meeting, such tenants not being less in number than a majority of the tenants of such manor; and the interest of the tenants in the manor not being less than two thirds of the annual value thereof, may proceed to make an enfranchisement of the manor from all manorial rights, except rights in mines or minerals, and the lord's reversionary interest on the termination of any grant for life or lives, or other terms, without right of renewal; and such enfranchisement, when con-

firmed, shall bind the other tenants of the manor. The bill next provides for the terms on which such a grant may be made; and that if the requisite number of tenants shall not be present at the meeting, a provisional agreement may be executed, and six months shall be given to obtain a sufficient number of signatures. The bill then goes into various matters of detail connected with the meeting. It provides for the computing the interest of the tenants for the purpose of voting; that meetings may be adjourned on notice being given; and that the agreement to be made shall be in the form which the commissioners shall direct.

We next come to the duty of the Commissioners under the proposed bill on the voluntary stage of the measure. In the first place, they are to frame and circulate forms; they or the assistant commissioners may attend to advise the terms on which the agreements may be made; they may decide on the terms on which any suit or difference respecting manorial rights may be referred to arbitration; they are to require and provide for the requisite consents being given, and after due inquiry they are to confirm the agreement.

The agreement being once made and binding, the next point is to value the rights of the parties interested in enfranchisement. For this purpose either at the first or some subsequent meeting, valuers are to be appointed by the lord and tenants, who shall apply for instructions to the Commissioners as to the duties to be performed by them. They are first to appoint an umpire, and are empowered to enter on the lands, having first made a declaration. The steward is to furnish them all requisite information, and to make a schedule as to all matters relating to the manor, for which he is to receive a proper remuneration. In valuing the rights of all parties, and in making the apportionment, the valuers are to take the particular circumstances of each case into consideration. The valuations and apportionments once made, are to be deposited for inspection in the hands of the steward, or some other person to be named by the Commissioner, and a notice is to be given for the purpose of hearing objections. The Commissioners are then to cause a schedule to be made of the sums to be paid for enfranchisement by the several tenants, according to the circumstances of each case, which schedule is to be inspected—the errors pointed out—and is then to be confirmed. Copies are to be deposited with the steward and the clerk of the peace, and

are to be open to inspection, and to be copied, and the Commissioners may supply any manifest error with consent.

These enfranchisements, as we have seen, are intended to be made under the direction of the Tithe Commissioners, but other enfranchisements are also to be facilitated. Power is to be given to all lords and tenants, whatever may be their interest in the manor and lands, to enfranchise, and whenever so many as twelve or more tenants shall agree with the lord for enfranchisement, such enfranchisement may be effected by a schedule of apportionment, to be confirmed by the Commissioners, and the provisions of the act shall apply. This, therefore, provides for a single franchise of a tenement, or a partial enfranchisement of a manor. All agreements and awards under the act are to be exempted from stamp duty, and the correspondence of the Commissioners is exempted from postage.

This is an outline of the facilities given to enfranchisement by the proposed bill. We shall, in a subsequent article, advert to the compulsory clauses.

#### THE PROTECTION OF PURCHASERS.

IN an article on this subject, in our last number, we inadvertently made an omission. We stated that by the 1 & 2 Vict. c. 110, s. 19, it is enacted, that no judgment of any of the Superior Courts of Law or Equity shall affect any lands as to purchasers, mortgagees, or creditors, unless and until a memorandum or minute, &c. shall be filed with the Senior Master, &c. The quotation should have been, "shall, by virtue of this act, affect."—See the section and marginal note L. O. Vol. XVI, p. 325. We afterwards stated, "It is thus provided, that all future judgments shall be entered in one book." This appears to be incorrect, and we may state we were misled by the speech of Sir Edward Sugden. See Hansard's Debates, 12 Feb. last. On referring to sect. 13, it will be seen, that the operation of a judgment as a charge upon lands, &c. under the late act, extended to past as well as future judgments. In order to give a judgment, whether past or future, the increased operation as a charge, under the said act, on lands, tenements, or hereditaments, the filing of the memorandum or minute is required by s. 19; but, without such memorandum or minute, a judgment will have its old effect, such as it would have had if the 1 & 2 Vict. c. 110, had not passed. We understand it is now a question with the bar, how far sects. 13 & 19 have affected the register counties; and that the general opinion is, that registration in the County Register Office, will give a judgment

the old operation as a charge; that registration with the Senior Master will give it the increased operation as a charge (which comprises the old); that the latter registration supercedes the necessity of the former (this is the questionable point); and that it is necessary to a purchaser's protection to search both.

While on this subject we may state that at present very few crown debts are registered; and it is necessary to apply at the different government boards, about eight in number, to know whether they have any such debts against the party. This evil will be remedied by the new bill.

#### NEW BILLS IN PARLIAMENT.

##### PURCHASERS' PROTECTION.

THIS is a bill "for the better protection of purchasers against judgments, crown debts, and fiats in bankruptcy."

It recites that it is desirable that further protection should be afforded to purchasers against judgments, crown debts, and *lis pendens*; and it is proposed to enact as follows:—

1. That no judgment shall hereafter be docketed under the provisions of an act passed in the fourth and fifth years of the reign of their late Majesties King William and Queen Mary, intituled, "An Act for the better discovery of Judgments in the courts of King's Bench, Common Pleas, and Exchequer, at Westminster," but that all such dockets shall be finally closed immediately after the passing of this act, without prejudice to the operation of any judgment already docketed and entered under the said recited act, except so far as any such judgment may be affected by the provisions hereinafter contained.

2. That no judgment already docketed and entered under the said recited act of their late Majesties King William and Queen Mary shall, after the first day of August one thousand eight hundred and forty-one, affect any lands, tenements or hereditaments as to purchasers, mortgagees or creditors, unless and until such memorandum or minute thereof as is prescribed in an act passed in the first and second years of her present Majesty Queen Victoria, intituled "An Act for Abolishing Arrest on Mesne Process in Civil Actions, except in certain cases, for extending the Remedies of Creditors against the Property of Debtors, and for amending the laws for the relief of Insolvent Debtors in England," shall be left with the senior master of the Court of Common Pleas at Westminster, who shall forthwith enter the same in manner thereby directed in regard to judgments, and such officer shall be entitled for any such entry to the sum of five shillings.

3. That in addition to the entry by the said last mentioned act, or by this act, required to be made, in a book by the senior Master, of the particulars to be contained in every memorandum or minute left with him, of any judgment, decree or order, rule or order, he shall insert

in such book the year and the day of the month when every such memorandum or minute is so left with him.

4. That all judgments of any of the superior courts, decrees or orders in any court of equity, rules of a court of common law, and orders in bankruptcy or lunacy, which, since the passing of the said recited act of the first and second years of the reign of her present Majesty, have been registered under the provisions therein contained, or which shall hereafter be so registered, shall, after the expiration of five years from the date of the entry thereof, be null and void against lands, tenements and other hereditaments, as to purchasers, mortgagees or creditors, unless a like memorandum or minute as was required in the first instance is again left with the senior master of the said Court of Common Pleas, within five years before the execution of the conveyance, settlement, mortgage, lease or other deed or instrument vesting or transferring the legal or equitable right, title, estate or interest in or to such purchaser or mortgagee, for valuable consideration, or, as to creditors, within five years before the right of such creditors accrued, and so, *toties quoties*, at the expiration of every succeeding five years; and the senior Master shall forthwith re-enter the same in like manner as the same was originally entered; and such officer shall be entitled, for any such re-entry, to the sum of shillings.

5. That as against purchasers and mortgagees, without notice of any such judgment, decrees or orders, rules or orders as aforesaid, none of such judgments, decrees or orders, rules or orders, shall bind or affect any lands, tenements or hereditaments, or any interest therein further or otherwise or more extensively in any respect, although duly registered, than a judgment of one of the superior courts aforesaid would have bound such purchaser or mortgagee before the said act of the first and second years of the reign of her present Majesty, where it had been duly docketed according to the law then in force.

6. That nothing in the said recited act of her present Majesty, nor in this act contained, shall extend to revive or restore any judgment which shall be extinguished or barred; nor shall the same extend to affect or prejudice any judgment as between the parties thereto, or their representatives, or those deriving as relations under them.

7. That no *lis pendens* shall bind a purchaser or mortgagee without express notice thereof, unless and until a memorandum or minute, containing the name and the usual or last known place of abode, and the title, trade or profession of the person whose estate is intended to be affected thereby, and the court of equity, and the title of the cause or information, and the day when the bill or information was filed, shall be left with the senior master of the said Court of Common Pleas, who shall forthwith enter the same particulars in a book as aforesaid, in alphabetical order, by the name of the person whose estate is intended to be affected by such *lis pendens*; and the provisions

hereinbefore contained in regard to the re-entering of judgments every five years, and the fee payable to the officer thereon, shall extend to every case of *lis pendens* which shall be registered under the provisions of this act.

(To be continued.)

## QUESTIONS AT THE EXAMINATION.

Easter Term, 1839.

### I. PRELIMINARY.

1. Where did you serve your clerkship?
2. State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.
3. Mention some of the principal law books you have read and studied.

### II. COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

4. In what cases where there are adverse claims, may a defendant apply for protection under the Interpleader act?
5. How does he apply, and at what period should he do so?
6. Are there any alterations made by a late statute in the execution of warrants of attorney and cognovits; and if so, what are they, and what kind of attestation is now required?
7. Should matter arise after plea and before verdict, can the defendant avail himself of it? and if so, how and in what manner should he proceed?
8. What is the difference between issues in fact and issues at law? and when there are both, how may they be disposed of?
9. In actions upon contract, and assumpsit, where some of the defendants let judgment go by default, and others plead, and upon the trial a verdict is found for one or all of the defendants who pleaded, would the jury proceed to assess damages against the defendants who suffered judgment by default, or what would be the result?
10. If the cause of action be matter of contract, on judgment against several persons, may execution issue, and the damages be levied against either, and can he compel contribution, and if so, how? and will it be the same in *fort*?
11. State shortly the nature of replevin, its use, and the mode of proceeding.
12. Describe the different modes by which cases are removed from the inferior courts.
13. In a guarantee on behalf of a third party, must any consideration be stated?
14. Suppose a debt to be incurred by parties resident in this country, and some months after the debtor should leave the country and reside abroad, when would the Sta-



- tute of Limitations begin to run, and what steps must be taken to keep the debt alive?
15. After what period will a deed prove itself?
  16. Can a clergyman be arrested on civil process whilst performing divine service on any other day than Sunday, or in going to or returning from the performance thereof?
  17. In what cases is registration of a judgment necessary, and what advantages attend the doing so, and for different purposes how should the same be registered?
  18. Within what time must application be made to set aside an award?
  39. How soon, after filing his answer, is a defendant at liberty to move that the plaintiff's bill may be dismissed for want of prosecution?
  40. Within what time must the plaintiff except to the answer of a defendant?
  41. When a plaintiff is served with a notice of motion that the bill may be dismissed for want of prosecution, what step must be taken by him to prevent dismissal?
  42. Has a plaintiff any means of enforcing the appearance of a defendant who absconds in order to avoid being served with a subpoena?
  43. When can a plaintiff, who has excepted to a defendant's answer for insufficiency, obtain an order to refer such exceptions to the master, if the bill be not for an Injunction? When can he obtain such an order in an injunction suit?

### III. CONVEYANCING.

19. What is a base fee?
20. What is the difference between things lying in livery and things lying in grant?
21. What are the objections to a deed of exchange, as a mode of conveyance?
22. What is meant by the protector of the settlement in the late act for the abolition of fines and recoveries?
23. Since the abolition of recoveries, how are remainders over barred; and who must join in the proceeding?
24. What is the use of getting assignments of outstanding terms to a trustee for the purchaser?
25. Is a purchaser for a good consideration from a voluntary grantee in a better situation, as to title, than the voluntary grantee?
26. Explain how the usual mode of conveyance by lease and release obviates the necessity of livery of seisin, or giving corporal possession of the land conveyed.
27. What are emblements?
28. State when the next of kin take *per stirpes* and when *per capita*.
29. Is there any difference, in legal effect, between devising land to charitable uses, and bequeathing personal estate to be laid out in land to be settled to such uses?
30. What is the consequence of the omission of the indorsement of the livery of seisin on a feoffment?
31. What constitutes a valid execution of a will under the recent statute of wills?
32. What is the consequence to an attesting witness of a will, so far as regards any and what legacies given by that will?
33. How can the revocation of a will be now effected?
44. Suppose a trader within the bankrupt laws die seised of real estates, and which he may have devised by his will, but not thereby charged with the payment of his debts, and which estates would be assets in the hands of the heir for the payment of *specialty* debts, can simple contract creditors obtain any and what assistance from a court of equity in discharge of such simple contract debts, and how?
45. If there be a decree for the sale of estates to pay debts, and such estates by descent or devise be vested in an infant, what authority has a court of equity in such cases to perfect such sale, and whence is that authority derived?
46. If estates be liable to the payment of debts of a settlor or testator, and such estates be vested in a tenant for life or other person having only a limited estate or interest, and the remainder or reversion in fee be vested in other persons, whether within or out of the jurisdiction of a court of equity, what assistance can such court give to perfect a sale of such estates, and how?
47. To what extent can Equity relieve creditors by or out of the copyhold property of persons dying seised of such property, and which persons shall not have charged such property with the payment of their debts?
48. If A. obtain the conveyance of an estate from B. by fraud, and A. sell the estate to a purchaser, will Equity relieve B., and set aside such conveyance and annul the sale to the purchaser? State in what case the Court would or would not do so.

### IV. EQUITY, AND PRACTICE OF THE COURTS.

34. What is the process to compel a corporation to answer a bill?
35. How is a suit instituted on behalf of infants?
36. Who is liable for the costs incurred by an infant plaintiff?
37. In what manner is the answer of an infant put in?
38. When is a cause said to be at issue?

### V. BANKRUPTCY, AND PRACTICE OF THE COURTS.

49. What judges have the jurisdiction of issuing a fiat in Bankruptcy?
50. What is the difference between a town and country fiat in respect of the number of commissioners before whom the same is prosecuted?

51. To what tribunal does the general jurisdiction in bankruptcy, formerly exercised by the Lord Chancellor, now belong?
52. Does any appeal lie from the judgment of the Court of Review on questions of law or equity, or of evidence received or rejected, and to whom?
53. What is the most general description of a trader liable to be made bankrupt?
54. Will acts of buying only, or of selling only, constitute a sufficient trading, and under what circumstances?
55. Can a person be made a bankrupt who has retired from business, and in respect of what debts?
56. Enumerate some of the acts of bankruptcy under the 6 Geo, 4, c. 16.
57. What are the means of compelling a debtor to commit an act of bankruptcy since the abolition of arrest on mesne process?
58. What steps must be taken to obtain a fiat?
59. How is a debt proved, and at what meetings?
60. What is an auxiliary fiat, and for what purposes is it granted?
61. What is done on opening the fiat?
62. What is the effect of proving a debt in respect of securities held of the bankrupt, or proceedings against him?
63. By what proportion in number and value of creditors is the bankrupt's certificate to be signed? and does it vary in any and what circumstances?
- after his appointment he cease to be qualified, can he nevertheless continue to act?
73. What are the modes by which a parochial settlement can now be gained?
74. Where is the *prima facie* place of settlement of an illegitimate child, and are there any and what exceptions to the general rule?
75. If a woman, having a legal settlement, marry a foreigner or other person not having one, and he die without having gained one, leaving her surviving, has she any settlement? and if so, where?
76. If a pauper, resident in a parish where he is not legally settled, become chargeable, how is he to be removed to the parish in which he is legally settled? And if that parish intend to dispute the settlement, how and before whom is the case to be tried? And if the tribunal before which the trial takes place cannot decide the case, how and to whom is the decision referred?
77. On the trial of an appeal against an order of removal of a pauper, is he or any person who is liable to contribute to the relief of the poor of the parish removing, or of the parish appealing, a competent witness in support of or against the appeal?
78. On what grounds, and in what manner, can a public foot-path be turned, diverted, or stopped up?

VI. CRIMINAL LAW, AND PROCEEDINGS BEFORE JUSTICES OF THE PEACE.

64. What is homicide, and what are its different kinds?
65. When is the crime of cutting and stabbing capital, although the party wounded does not die in consequence thereof?
66. What is sacrilege?
67. Is the stealing of title deeds relating to a *real estate* criminal or only actionable?
68. Is it lawful to set a man-trap, spring-gun, or other engine which is calculated to destroy human life, or to inflict bodily harm, in any and what place or places, and when?
69. If a prisoner, on being arraigned, stand mute, and refuse to plead, what is the mode of proceeding?
70. Where a person is convicted of felony, and receives judgment, does all his property, real as well as personal, become thereby forfeited; and if so, is there any and what difference between real and personal property as to the time of forfeiture?
71. Will ignorance of the law in any and what case excuse a person who has committed an offence?
72. What is the property qualification of a justice of the peace for a county, and by whom and how is he appointed? and if

RESULT OF THE EASTER TERM EXAMINATION.

We learn that 110 Candidates attended at the Examination, on Tuesday last. Four were absent. The result has been, we understand, that certificates of "Fitness and Capacity," were granted to 105, and the remaining five, whose Answers to the Questions were not deemed sufficiently satisfactory, have been postponed.

It appears that some of the Candidates went away about 12, and the last did not leave the Hall till past 5 o'clock. Whether all or any of the "postponed," made more haste than good speed, we are not prepared to say.

Our readers will observe the Questions (almost *verbatim*) in another part of the present number, and comparing them with those of the last Term, they appear somewhat more difficult; but they are on the whole a very good set. There are some, well calculated to draw out the legal knowledge of the diligent student, and others are easy enough to all but the extremely idle.

## SELECTIONS FROM CORRESPONDENCE.

### ATTESTING WARRANTS OF ATTORNEY.

*To the Editor of the Legal Observer.*

Sir,

My objects in framing the attestation which appeared in L. O. 17 p. 377, were to satisfy the enactments of the 9th section of the act, and at the same time to avoid introducing statements not required by the act, and troublesome to the memory.

Your correspondent W. F. F. does not, however, consider the form can be safely adopted, because it does not *prima facie* satisfy the requisitions of the statute; but in what respects he is silent. He adds "that one of the chief objects of the statute is to compel the attendance of an attorney at the request of the defendant, to witness his execution, and subscribe as such attorney." If this remark be meant to shew wherein the form given is deficient, I would observe, I am well aware the object of the act is to protect defendants by placing his *bond fide* attorney at his elbow to explain to him the nature of the instrument he is about to execute, but it by no means follows, neither does the act require that these several facts are to be stated in the attestation, swelling it to a size as unnecessary as inconvenient. The first part of the section declares what is necessary to be done previously to the execution of the instrument; and the latter part expressly directs what is to be stated in the attestation; and I submit, that having followed the words of the act in framing the form, your readers can, with very little difficulty, decide whether it be in compliance with the act.

I trouble you with these remarks on a subject by no means obscure, as I should regret a form being recommended by insertion in your widely circulated journal which might be the means of seriously misleading others, if it could not be safely adopted.

The word "due" should precede execution.  
G. H.

### LIABILITY OF INFANTS.

Will W. W. H. either cite a case, state some principle, or give some reasons why he so confidently asserts that the consent of a father to the supply of necessaries ordered by an infant son, absolves the infant from liability.

If the consent be (as he states) in the nature of a guarantee (which I very much doubt, as the father is liable as *principal*, see *Legal Observer*, Vol. 2, p. 19), where does he find any case which prevents a creditor resorting to the principal?—which, in this case, is the son. The contract of the surety is, to pay if his principal do not; and by no means to absolve the latter from liability.  
G. H.

### ATTORNEYS WEARING GOWNS IN COURT.

*To the Editor of the Legal Observer.*

Sir,

You are aware that in the Common Pleas, attorneys are admitted in gowns, and, in fact, are obliged to assume this attire on the occasion. The question which presents itself to me is whether it would not be highly advisable for the profession at once to resume this honorable and ancient mark of distinction, in order to prevent much of that annoyance which impedes the path of attorneys when engaged in court. A number of gentlemen, to my knowledge, have determined to wear the gown, when so engaged, and so afford a precedent at once for the rest of their brethren to copy. I was much pleased to see a letter addressed to you by "Specto," on this subject, in September last, and have been anxiously wishing to see your remarks on the subject, by way of reply; which, I trust, will have the effect of rendering the change general throughout the profession.

### A COMMON PLEAS ATTORNEY.

[To our respected Correspondent we can only say, that there can be no question of the right of attorneys to wear a gown, after the ancient fashion, and that they will thereby identify themselves to the officers of the several courts, and secure accommodation now occupied by mere idlers. We question, however, whether the fashion can be generally revived, as it will be inconvenient for those who have not frequent occasion to attend the court personally, to be provided with gowns, and, perhaps, the costume of the private gentleman is more convenient than the robe of the olden time. The Proctors always wear their gowns in Court; but they are a small body, and their offices are near the Court.—Ed.]

## SUPERIOR COURTS.

### Vice Chancellor's Court.

#### SPECIFIC PERFORMANCE.—PERSONAL LIABILITY.—DEMURRERS.

*Three persons, trustees for a public company, contracted in their own names as individuals for the purchase of mines, part of the purchase money paid down, and part to be afterwards paid, with interest in the mean time; the property to be a security, and to be liable after notice; the purchasers discharged from personal liability. The purchasers were let into possession, and their company worked the mines, and deteriorated the property. The vendor, in a bill for specific performance, charged the individual purchasers as personally liable, on the ground of conduct, and also the members of the company in respect of their dealings with the property: Held, upon demurrers to the bill, that the three purchasers were liable for specific performance of the agreement; that they were not personally liable*

*for the balance of the purchase money, for which the property sold was alone security to the vendor, on giving notice; and that the other individual members of the company were not at all liable.*

The cause of *Small and others* (the British Mining Company) against Mr. John Attwood and others, instituted in the Court of Equity Exchequer, in the year 1826, for the purpose of rescinding a contract entered into by the said plaintiffs with Attwood in 1825, for the purchase of his iron and coal mines at Congreaves in Staffordshire, on the ground of fraudulent misrepresentation of the value of the mines, has been reported from time to time in the Legal Observer. (See the judgment of Lord Lyndhurst, C. B., decreeing the rescinding of the contract, 5 Leg. Obs. 47; his Lordship's judgment impounding 200,000*l.*, part of the purchase money paid by the plaintiffs, and traced to Mr. Attwood's broker, invested by him into stock, and transferred to the name of Mrs. Phoebe Attwood, who was held to be a trustee thereof for the plaintiffs, 5 Leg. Obs. 271; the same learned Lord's judgment upon exceptions by Attwood to the Master's report, and upon a motion for paying to the said plaintiffs out of Court a sum of about 50,000*l.*, paid in by them at different times, for interest on 325,000*l.*, the unpaid balance of the purchase money, 6 Leg. Obs. 299; and a judgment of Lord Abinger, C. B., in February 1835, upon a plea by Attwood to the plaintiffs' supplemental bill, 10 Leg. Obs. 27.)

In March 1838, the House of Lords reversed Lord Lyndhurst's decree, and ordered the plaintiffs' bill to be dismissed with costs, and that the cause be remitted back to the Court of Equity Exchequer to do therein as should be just and consistent with their Lordships' said judgment.\* That order was accordingly made an order of the Court below, and Mr. Attwood soon afterwards presented a petition to that Court, praying (amongst other things) an order on the said plaintiffs for payment to the petitioner of 131,108*l.*, 53,706*l.*, and 11,430*l.* The first sum was for the instalments of interest on the 325,000*l.* unpaid purchase money, since the date of the reversed decree (1832), with interest on these instalments. The second sum was for the said 50,000*l.* paid out to the said plaintiffs, and interest thereon. The third sum was for 9766*l.* costs paid by Mr. Attwood in pursuance of the reversed decree, and interest thereon since November 1834, when he paid the said costs. Lord Abinger, C. B., after hearing counsel for, and taking time to consider the questions raised before him on that petition, held that Attwood was entitled to be repaid the sum of 9766*l.* paid by him for costs, but no interest. With respect to such instalments of interest on the 325,000*l.* as became due to Attwood after the decree was pronounced against him, his Lordship said that he

had no remedy in that suit, the order of the House of Lords reversing the decree having at the same time directed the bill to be dismissed; and with respect to the instalments of the interest paid into Court before that decree was pronounced, and paid out afterwards by order of the Court, Attwood was entitled to be paid that accumulated sum, with any dividends that accrued on it in stock after it was paid out to the plaintiffs, but not to any interest beyond such dividends. (See the report, 3 Y. & C. 105.)

Mr. Attwood had, in 1826, filed a cross bill in the Equity Exchequer for specific performance of the contract, against the plaintiffs in the original suit, but as soon as Lord Lyndhurst pronounced the decree against him in that suit he voluntarily dismissed his cross bill. He now filed his bill in Chancery against Mr. Robert Small and the other plaintiffs in the suit in the Equity Exchequer, for specific performance of the contract, and for payment of the 325,000*l.* the unpaid balance of the purchase money, and for other relief which he had sought but did not obtain in the Equity Exchequer. The bill stated the contracts and proceedings above referred to, and that shortly after the appeal was decided in the House of Lords, the British Mining Company held a meeting, at which they authorised the directors to raise a loan of 300,000*l.*, and out of that money to pay Attwood to the amount of 200,000*l.*, what he should be entitled to in consequence of that decision, either from the parties to the contract, or the plaintiffs in the suit. But, as to the rest of his demands, the agent of the company published the following statement, on the 11th of May 1838:—"The unqualified opinion of counsel being, that there is no liability to Mr. Attwood for the payment of 325,000*l.*, the directors do not think it necessary to make provision with respect to that sum. If at a future period it should be thought desirable by the directors and proprietors to redeem the interest payable whilst the possession and working of the Congreaves continued, they may do so either by giving their consent to calls for that purpose, or by disposing of any part of the property of the company." This bill was filed immediately after the publication of that statement, for the purpose of attaching a *lis pendens* on all the property of the company; and it prayed that such declaration might be made as the rights and interests of Attwood, in respect of the matters stated in it, might require, and particularly in regard to the personal liability of Messrs. Small, Shears, and Taylor (the contracting parties), and of the directors and trustees of the company, living or dead, and of the plaintiffs in the original suit, and of the company and its several members, and of the estates of the company, and that they might be decreed personally or out of the estates they represented, to pay at once a sum of 250,000*l.*, with interest on the sum of 350,000*l.*, at 5 per cent. up to the time of the payment of the 250,000*l.*, and to execute a proper mortgage, according to the agreement, for the

\* The report of the case in the House of Lords is in course of being prepared for publication by Messrs. Clark & Finnelly.

balance, a last instalment of 75,000*l.*, with interest at  $4\frac{1}{2}$  per cent., or that they should be ordered to pay the value of the minerals that had been raised by the company out of the estates, after deducting the cost of bringing them to the pits'-mouth, to the amount aforesaid; and to make up any deficiency, or else to raise the whole amount which should be necessary for satisfying Mr. Attwood's claims, by a sale or mortgage of the estates.

The defendants put in several demurrers to the bill on several grounds, but chiefly for want of equity, alleging that the relief prayed was a departure from the agreements. (There were three agreements.)

The demurrers came on to be argued before the *Vice Chancellor*.

Mr. *Knights Bruce*, Mr. *Jacob*, Mr. *Wigram*, and Mr. *Sharpe*, supported the demurrers.

Mr. *Wakefield* and Mr. *Lowat* supported the bill.

The statements, allegations, and arguments on both sides were to the following effect:—The original purchase money was 600,000*l.* A sum of 225,000*l.* was paid on the signing of the second agreement, which was dated the 1st of October 1825, and the rest was to be paid by three instalments of 100,000*l.* each, on the three succeeding half-years, and the last instalment of 75,000*l.* was to be paid on the 1st of October 1827. By the first agreement in June 1825, Attwood was to make a good title before delivery of possession. By the second agreement, it was arranged that Small, Shears, and Taylor (whose names alone were mentioned in all the agreements, as contractors with Attwood) should be let into possession immediately, but that such possession should not be deemed an acceptance of the title, which Attwood was to proceed with all despatch to complete; and that, on the 5th April 1826, Attwood should convey the estates (whether the titles were then completed or not) to trustees, upon several trusts provided in the former agreement for payment of the instalments, the payment of which was not to be disturbed by the new agreement, save as to the last instalment of 75,000*l.*, which was to be postponed for fourteen years, from October 1827, upon a mortgage of the estates, as an indemnity (together with the bond of Attwood) for any defects of title. Then came the third agreement, of the 4th of November 1825, the material part of which was in these words:—"It is hereby agreed that John Taylor, James H. Shears, and Robert Small shall be, and they are hereby exonerated and discharged from all and all manner of personal liability to the payment of any sum or sums of money, whether by reason of their having been parties to, and signed the memorandums of agreement before mentioned, or from any act whatsoever, in anywise incidental thereto or consequent thereon, *save and accept that they shall remain liable to the payment of interest on the remaining instalments of the purchase money, and that Attwood shall be satisfied, as his only security with the security of the hereditaments specified in the agreements, and*

which hereditaments were to be conveyed to trustees in the manner there expressed, and *with the usual powers of sale for enabling the trustees to raise and pay such of the instalments as should from time to time fall due, and interest, it being nevertheless understood and agreed, as between the parties, that no sale should be made or proceedings taken, with a view to a sale, until Attwood should give Taylor, Shears, and Small six months' notice previous to such sale, nor until the time mentioned shall have expired.*" And then the agreement went on to reduce the first instalment of 100,000*l.* to 50,000*l.*, on some depreciation in the property from the loss of a communication with a canal which was apprehended.

The counsel for the defendants contended that by the terms of this last agreement there was no pretence for holding all or any of the individual contractors as members of the company *personally* responsible for the principal of the instalments, and that Attwood was reduced to the mere situation of a mortgagee with powers of sale, and that he had not entitled himself even to such relief as his bargain warranted, as he had not given six months' notice. Possession of property by the company was nothing, as possession was consistent with the contract; and a mortgagor was not liable to account to his mortgagee for his receipts while his possession was permitted.

The counsel for Attwood, on the other hand, insisted that the conduct of the company had materially altered the case; that when he consented to forego the personal responsibility of Small, Shears, and John Taylor, he did not suspect the suit they had then in preparation for him in the Equity Exchequer; that pending that suit the company had not only worked the old pits, but had opened new pits, and that they had extracted 900,000 tons of coal, and 450,000 tons of ironstone, at a value altogether of 270,000*l.*; and that the whole property, while in their hands, was deteriorated at least 280,000*l.*; that it was impossible to restore things to the same plight as when the instalments became due, and that he consented to the last agreement (which was without consideration) upon the faith that the company, or the directors, would honestly and fairly pay the instalments as they should fall due, and that he had been obstructed by all the parties to the suit, who had enjoyed his property in raising the purchase money out of the estates, and he was therefore entitled to look to them personally for what it was plain they would never pay unless this Court was strong enough to reach them, and to do justice in an emergency which had never been foreseen.

There were other objections to the bill for want of parties, &c. which are noticed in the judgment.

The *Vice Chancellor*, having taken time to consider his judgment, now delivered it, at great length, to the following effect:—These demurrers, on which many points have been raised, may, notwithstanding, be disposed of

by considering the two main questions—*first*, whether the plaintiff is entitled to any relief; and *secondly*, if he is entitled to relief, whether he is entitled to any relief against any other persons than Small, Shears, and John Taylor, the original purchasers, or, which is the same thing in substance, to any relief against the purchasers beyond specific performance. Upon the first question, it appears plain that the plaintiff is entitled to some relief in the nature of a specific performance of the agreements against Small, Shears, and John Taylor; for there is no objection to the agreements on the face of them, nor upon what appears in the bill is there any thing to affect them, and they have been partly performed by the purchasers taking possession and partly paying the purchase money. The objection made that six months' notice has not been given, is no objection to giving some relief, but is only applicable to the mode of dealing with the trusts to be created in pursuance of the agreements. Therefore one ground for supporting the demurrers, namely, the want of general equity, fails. The second question is, whether the plaintiff can have relief beyond specific performance against the original purchasers? By virtue merely of the agreements the plaintiff is not entitled to relief against any persons but the purchasers. Upon the ground of conduct only, can the plaintiff have relief against any of the other defendants. But if he is entitled to ulterior relief against the purchasers in respect of their personal liability, grounded upon conduct, he cannot be entitled to relief against other persons. The purchasers were three of the trustees of the British Iron Company, and they and two other trustees, and eleven other persons were the directors of the company, and the conduct of the directors and their superintending agent, Philip Taylor, is in effect the conduct of the purchasers. This is a case wherein the plaintiff expressly contracted not to have the personal liability of the purchasers, except in the limited case of their being in possession; in which case the purchasers were to be liable for the remaining instalments of the purchase money, 325,000*l.* The plaintiff acted upon that contract. After he had given up possession to them he brought four several actions against them for the quarterly instalments of the 325,000*l.*, and recovered. At the time the actions were brought the company were in possession, but it was a possession derived from the purchasers, and therefore it was the purchasers' possession, both in the view which they as well as the plaintiff entertained, and in the view which both the courts of law and of equity took of the matter. It appears that the plaintiff by his cross bill in the Equity Exchequer prayed a receiver, but it does not appear that he ever applied to the Court for a receiver. The contract was completely acknowledged by both parties, except so far as an attempt was made to get rid of it on the ground of fraud upon the purchasers. The counsel for the plaintiff in arguing this case contended, not only that the purchasers were

by reason of conduct liable beyond their liabilities on the agreements, but also that by reason of their conduct the directors and the company were liable, and they referred to the passages in *Hanson v. Gardiner*,<sup>b</sup> where it is said, "This led to *Robinson v. Byron* and the other cases, in which also this principle operated, that unless there was some jurisdiction to prevent it there would be a great failure of justice." That observation was made with reference to a case of trespass, where irreparable mischief would be the consequence, but it has no reference to a case, where a party chooses to contract to give up certain remedies, or expose himself to certain inconveniences. The same counsel also referred to passages in *Pulteney v. Warren*,<sup>c</sup> where it is said, "If there be a principle upon which courts of justice ought to act without scruple, it is this, to relieve parties against that injustice occasioned by its own acts or oversights at the instance of the party against whom the relief is sought." These observations were made with reference to a case where the tenant had, first by his application at law in an ejectment against him by the reversioner, and afterwards by a bill in equity, restrained the reversioner from taking possession; and Lord Eldon held that the executors of that tenant were liable to account for mesne profits. Lord Eldon says, "The equity as to all of them (the tenants) arises from their joint act, operating to prevent the plaintiff from having that redress at law which in all moral probability he would have had, if this Court had not interfered, and which in all moral justice he ought to have had." Reference was also made to cases, where the obligor in a bond obtained an injunction against the obligee, and where a mortgagee continued in possession after he had been satisfied his principal and interest, in which cases equity gives relief against the wrongful act of the mortgagee and obligor. But in what way did the proceedings of these purchasers in the Equity Exchequer prevent the plaintiff from having any remedy for the recovery of the unpaid purchase money, which he might have had consistently with the agreements? By the agreements, after payment of the 225,000*l.*, which was paid on giving up possession; 50,000*l.* was to be paid on the 15th April 1826; 100,000*l.* on the 15th April 1827; 100,000*l.* more at another period; and 75,000*l.* was to be left on mortgage for fourteen years from the 15th of October 1827. Possession was given up by the plaintiff soon after the 4th of November 1825. The original bill in the Equity Exchequer was filed the 27th of June 1826; the cross bill the 12th of July 1827. Before that day the company had raised upwards of 120,000 tons of coals and 60,000 tons of iron-stone, and cut the greater part of the timber on the estate. A letter from John Taylor to Attwood, on the 29th of November 1825, apprised him that the company meant

<sup>b</sup> 7 Ves. 305, see p. 308.

<sup>c</sup> 6 Ves. 92, see p. 93.

to pay him out of their returns from the Congreaves; and the letters of the 8th and 13th of April 1826, shew that the plaintiff consented to postpone payment of the instalment of 50,000*l.* due on the 15th of April 1826. The half-yearly payments of 8125*l.*, due for interest on the unpaid balance of 325,000*l.*, on the 1st of October 1826, 1st of April 1827, 1st of October 1827, and 1st of April 1828, were paid in consequence of the actions brought by the plaintiff to recover those instalments. Another action was brought for the half-yearly payment of interest due in October 1828, in consequence of which an order of the 28th July 1829, was made for an injunction on terms of bringing the money into Court. There was no appeal from that order, and the money paid into Court the plaintiff has received, or may receive. By bringing actions at law for the interests, the plaintiff admitted the right of the purchasers to be in possession. He did not bring any ejectment against them, as he might have done consistently with the purchasers' bill, and, as I think, with his own cross bill for specific performance. But if the ejectments would have been inconsistent with his cross bill, it could only have been so because the purchasers under the agreements had a right in equity to keep possession. In his cross suit he did not apply for a receiver, but was content that the purchasers should have possession for their own benefit. He did not even choose to have a specific performance of the agreements, but dismissed his cross bill voluntarily, though the reasonable inference is, that if he had brought it to a hearing, and the Court had dismissed it, as probably the Court would have done, the House of Lords would, upon appeal, have reversed the decree of dismissal, and decreed for specific performance. The plaintiff virtually puts his equity for having relief, beyond mere specific performance, upon this, that a large portion of the minerals in the property sold has been obtained by the wrongful act of the company, and thereby the plaintiff's security has been greatly diminished. But the answer is, the plaintiff chose it should be so, in order that he might have the half-yearly payments of 8125*l.* There was no new agreement, when the plaintiff gave up possession, that he should have any other security than that which at the time was provided by the agreements. He says he gave up possession in confidence that the remaining instalments would be duly paid; but he does not state that any new agreement was then made. The letters of the 8th, 12th, and 13th April 1826, shew that the plaintiff knew that further security was refused. The truth is that the agreements suppose that the possession might continue with the purchasers, and the principal sum of 325,000*l.* remain unpaid long after the times for payment of it had passed; and, of course, if the purchasers were in possession for their own benefit, they could only do so by working the minerals, and exhausting the mines. I am of opinion, therefore, that upon the ground of conduct no relief can be had against Small, Shears, and

John Taylor, and none against the other directors or their agents, as the company. The consequence is that the demurrer of Bailey and others, and the demurrer of Burton and others, must be allowed with costs. But though no relief can be given against Small, Shears, and John Taylor, on the ground of conduct, yet as some relief can be given against them in the way of specific performance, their demurrer must be overruled. In my view of the case, all that is stated in the bill about conduct is mere surplusage, and it is not necessary to decide upon any other ground raised by the demurrer of the purchasers than the want of equity; save only that, for the purpose of costs, I must advert to one ground, namely, the absence of a personal representative of John Morrice, which I think would have been a good ground of demurrer, if the case of conduct could have been sustained, and therefore the demurrer of Small, Shears, and Taylor must be overruled, without costs.

*Attwood v. Small and others.*—Sittings at Lincoln's Inn before Easter Term, 1839.

#### Queen's Bench.

[Before the Four Judges.]

#### BILL OF EXCHANGE.—PLEADING.—PRACTICE.

*The Court possesses a power to set aside a plea which is not an issuable plea, although the defendant was not, at the time of pleading it, under terms to plead issuably.*

*But the Court will not exercise this power unless the plea is manifestly absurd.*

*A plea by the acceptor of a bill to an action by the indorsee that the defendant had not notice of the indorsement, nor did he after the indorsement promise to pay the bill, nor did the plaintiff pay the consideration to the indorser, was not treated as absurd.*

Mr. Theobald moved for a rule to shew cause why the plea in this case should not be set aside, and why the plaintiff should not be at liberty to sign judgment as for want of a plea. This was an action by the indorsee against the acceptor of a bill of exchange. The declaration stated the making of the bill, the acceptance by the defendant, and the endorsement through different persons to the plaintiff, and contained the usual allegation, "of which said premises the defendant had notice;" and that the defendant promised to pay the bill according to the tenor of his acceptance. The defendant pleaded that he had not at any time before the bill became due notice that it had been indorsed, nor at the time of the indorsement did he promise to pay the same, nor did the plaintiff pay the whole amount of the bill to the indorser, from whom the plaintiff received the said bill. This is not an issuable plea. *Cowper v. Jones*<sup>a</sup> has established a rule which it is desirable should be re-considered. That was a declaration on a *scire facias* against bail. The bail pleaded that the principal had become bankrupt, without stating that he had obtained his certificate. The Court refused to set aside the plea, as the defendant, at the time

<sup>a</sup> 4 Dow. P. C. 596.



of pleading it, was not under terms to plead issuably. The plea here states three distinct matters and was therefore bad in itself; and the question is, whether it may not be set aside, though the defendant was not under terms to plead issuably. The rule laid down in *Couper v. Jones* has not become inveterate by long acquiescence and practice, although it has been much acted upon by the Judges in Chambers; and the practice which previously existed, as well as the dicta and judgment of the Courts, are at variance with it. The consequence of the rule is, that there never was so much sham pleading as there is at present. In *Miley v. Wales*,<sup>b</sup> Lord Lyndhurst and Baron Bayley asserted in the fullest terms the jurisdiction of the court as to sham pleas, without restricting it to cases in which the defendant was under terms of pleading issuably. That, like the present, was an action by the indorsee against the acceptor of a bill of exchange. The defendant pleaded that the bill was given without consideration; that his name was put upon it without his knowledge, on a blank piece of paper, and that the plaintiff had notice of these facts. On application to a Judge at Chambers, this plea had been set aside; and the Judge's order was set aside on the ground that it exceeded the jurisdiction of a Judge at Chambers: but the Court immediately afterwards, on the same affidavits, made a rule absolute to set aside the plea. It may be admitted that there are pleas which the Court did formerly, but will no longer treat, as sham pleas: the plea of accord and satisfaction is often used as a sham plea, and was treated as such in *Richley v. Proone*,<sup>c</sup> but that case is overruled by *Morington v. Becket*,<sup>d</sup> on grounds which apply to the plea of accord and satisfaction, and to no other. The latest case is *Smith v. Hardy*.<sup>e</sup> There to a debt on a bond, the defendant pleaded a release, dated Dec. 1831, destroyed by time and accident: and upon an affidavit that the plea was false, the Court gave the plaintiff leave to sign judgment; and the grounds on which this was allowed were that it was an ingeniously drawn plea, calculated to raise doubts in what manner issue could be taken upon it. So in the present case, delay evidently is the only object: the plea involves three issues, no one of which is material, and yet if the plaintiff takes issue upon all, the defendant will demur, and his object will be answered, because the case will be put into the special paper: or if the defendant does not demur, the issue would necessarily be found in his favour, because the plea is true, and the plaintiff would have to move for judgment *non obstante veredicto*, which would equally answer the defendant's purpose, because it would carry the case into the new trial paper. The ancient ground on which this jurisdiction was raised was that sham pleading was a contempt of the Court, and no worse plea than the present can be pleaded to delay the administration of justice.

<sup>b</sup> 2 Law Journal, N. S. Ex. Cas. 172.

<sup>c</sup> 1 B & C. 286. <sup>d</sup> 2 Barn. & Cres. 81.

<sup>e</sup> 8 Bing. 435; 1 Moore & Scott, 676.

Lord Denman, C. J.—I am not prepared to renounce any part of the jurisdiction of the Court; but I am not prepared to multiply the cases for its summary interference. If there is no plea in this case, or what is in law no plea, the plaintiff may sign judgment for want of a plea, but he must do so on his own responsibility. The question will then come before the Court in a proper way. As to the Court giving leave to the plaintiff to sign judgment on the ground that the plea is a frivolous plea: it cannot do so, unless the plea is most clearly frivolous; and even then leave would not be given on a summary application, without the defendant having time and opportunity to defend the plea. If the plea went further, and was clearly an absurd plea, the Court might set it aside, and visit on the individual the consequences of putting such a plea on the record. It does not seem to me that the plea is so, and I am therefore of opinion that the rule must be refused.

Mr. Justice Littledale.—If the plea is clearly contrary to the rules of the Court, there is no doubt that the Court possesses the power to set it aside, and would do so, and so it would if the plea was plainly no answer to the action—as if in debt the defendant pleaded *non assumptit*. But this is not a case of that kind.

Mr. Justice Patteson.—If the language I used in *Couper v. Jones* is correctly reported, which I have no reason to think is not the case, I must be taken to have repudiated the authority of the Court to set aside pleas under circumstances; but it is an authority which, in my opinion, ought to be very sparingly exercised.

Mr. Justice Coleridge.—It is a general rule of the Court not to inquire into a plea upon affidavit. But there are some cases in which, notwithstanding that rule, the Court permit such an inquiry. I think, however, that the Court ought to be slow to exercise such a power. We cannot attend to the distinction between false in point of fact and bad in point of law.

Rule refused. *Horner v. Keppel*.—E. T. 1839. Q. B. F. J.

#### BILL OF EXCHANGE.—PLEADING.

*Where an acceptor of a bill of exchange pleaded to an action brought against him by an indorsee, "that the drawer did not, at the time of making the bill, nor of the acceptance thereof, pay the defendant the sum of 47l., which was the consideration for which the bill purported to be given," the Court granted a rule to set aside such plea with costs, treating this as a plea which was manifestly absurd.*

Mr. Humphrey moved to set aside a plea as insensible. He said that he knew the rule which their Lordships had stated in the case moved by Mr. Theobald, and he thought that the present came within it. This was an

action by the indorsee against the acceptor of a bill of exchange. The plea was, that the drawer did not, at the time of making the bill, nor of the acceptance thereof, pay the defendant the sum of 47*l.*, which was the consideration for which the bill purported to be given. This was clearly an absurd plea. If proved, it would be no answer to the action, for the money might have been due in respect of money before then lent, or goods sold, or work done.

Lord Denman, C. J.—We ought to hear whether the gentleman who signed this plea will defend it.

Mr. *Humfrey* said that he had been instructed to move to set aside the plea with costs, as a plea pleaded in contempt of the Court.

Lord Denman, C. J.—“As in contempt of Court” are technical words, which may embarrass the rule: it had better be “with costs,” without saying anything of the contempt.

Rule granted accordingly. — *Knowles v. Burnard*, E. T. 1839. Q. B. F. J.

#### Queen's Bench Practice Court.

##### SMALL DEBTOR.—SERVICE OF RULE, HUSBAND AND WIFE.

*Where the residence of the party at whose instance a prisoner is in custody for twelve months, cannot be found, he may be discharged under the 48 G. 3, c. 123, without serving the notice or rule.*

This was an application by *Heuton* to discharge a defendant out of custody under the provisions of the Small Debtor's Act, the 48 G. 3, c. 123. It was an action brought in the name of husband and wife, at the instance of the wife only. The plaintiffs were nonsuited, and the male plaintiff was taken in execution for the costs of the nonsuit. The prisoner had made every effort to find the residence of the defendant. The plaintiff had also inquired from his wife, with whom he did not reside, where the defendant lived; but she was unable to inform him as to that fact. The practice of the Court required that the service of the notice or rule should be on the party himself. The question was, therefore, whether the plaintiff had done enough in the present case to be considered as equivalent to the service required by practice of the Court.

*Williams, J.*—I think, under the circumstances, the plaintiff has done enough to entitle himself to a rule for his discharge.

Rule granted. *Bradley and Wife v. Webb*. E. T. 1839. Q. B. P. C.

#### Common Pleas.

##### WRIT OF FALSE JUDGMENT.—RECOGNIZANCE.—RETURN OF SHERIFF, 19 G. 3, c. 70, s. 6.

*The 6th section of the 19 G. 3, c. 70, is not intended to apply to cases where judgment has been given in an inferior court not of record. Therefore where, in a return to a writ of false judgment the sheriff stated that the plaintiff in error had not given*

*security, it was held that the return was bad, and was quashed.*

*W. H. Watson* shewed cause against a rule obtained by *Erle* for setting aside the sheriff's return to the writ of false judgment in this cause. The application was made on behalf of *Longdon*, the plaintiff in error, and the rule had been drawn up on reading the writ of false judgment and the return thereto. The writ directed, in the usual form, that the sheriff of York should record the plaint of *Longdon*, on his giving security to prosecute his suit in error. On the 22nd November, the sheriff returned that the within-named *W. Longdon* had not given security in law, whereby he was prevented from recording the suit as he was commanded. It was submitted that the return was sufficient. The sheriff, it was said in the old books, was never so safe in making a return as when he followed the writ in its terms. By the affidavit now produced, it besides appeared that the practice in the County Court of York, from which it was sought to remove the record in this cause, was to require security in fact to be given, and therefore the sheriff's return was correct. The point turned upon the proper construction to be put upon the 19 G. 3, c. 70, s. 6, and it was submitted that that section was general in its provisions, and applied as well to courts not of record as to courts of record.

*Tindal, C. J.*—The statute is at all events clearly intended to apply to cases of proceedings before judgment. Here judgment in the court below has passed.

*W. H. Watson*.—It did not necessarily apply to such cases only, for writs of habeas corpus, which were mentioned, were not confined in their application to cases before judgment. *Grimshaw v. Emerson*, 1 D. P. C. 337, was in point, as shewing that the statute applied to courts not of record.

*Tindal, C. J.*—That was a case in which judgment had not been given; and the object was to take it away from the inferior and try it in the superior court. Here the case has been tried. Let us assume that the section applies to cases in courts not of record, and then take it and apply it to the present case. What is it you want to shew? There are no costs in writs of false judgment. Was not the real intention of the section to prevent the party from moving a case of small value from the court, in which the expences would be light, to a superior court, where they would be great?

*W. H. Watson*.—There would, at all events, be delay in coming to the superior court, and although the party might be entitled to any fresh costs, he should, at least, have security for the payment of the debt and costs already incurred in case of the judgment being in his favor. The reasons to induce the defendant below to bring a writ of false judgment would be otherwise much increased.

*Erle*, in support of the rule.—The statute did not apply to courts not of record, nor to cases where judgment had been obtained. The 4th, 5th, and 6th sections must be taken together, and then it would be seen that after

the first two of them expressly referred to courts of record, the 6th only took up and completed the provisions. A court not of record, besides, could not take a recognisance anew; for if it had not the power of recording the proceedings within its jurisdiction, it could not record the recognisance. The sheriff had no power to record in his court. *Mitchell v. Mitcheson*, 1 B. & C. 517; but after judgment had been obtained in an inferior court, it could not be removed until recognisance had been given. *Grimshaw v. Emerson* did not apply here, for that case was before judgment, and the distinction taken here between courts of record and not of record was not then referred to.

*Tindal, C. J.*—I think this case does not fall within the terms of the statute 19 G. 3, c. 70. The 4th, 5th, and 6th sections of that statute are all made on the same subject-matter, namely, on cases where the action is brought in the superior court for a smaller sum than 10*l.* The 4th section provides that where the debt is under 10*l.* persons might, to avoid execution, remove their persons and estates beyond the jurisdiction of the court, the record of the judgment might be removed into the superior court, in order that writs might be executed. The 5th section provided, that no execution should be stayed or delayed upon or by any writ of error, or supersedeas for the reversing of any judgment in any inferior court of record when the damages are under 10*l.*, unless the person in whose name the writ of error should be brought, with two sureties, be bound to the person for whom judgment shall be given, by recognisance, to be acknowledged in the same court, in double the sum adjudged to be recovered, to prosecute the writ of error with effect, and also to satisfy and pay if the judgment be affirmed, all and singular the debt, damages, and costs awarded for delaying the execution. Then the 6th clause takes up the provisions, and enacts that no cause, where the cause of action shall amount to the sum of 10*l.*, shall be removed into any superior court by any writ of habeas corpus, or otherwise, unless the defendant who shall be desirous of removing it shall enter into the

like recognisance for payment of the debt and costs in case judgment shall be against him. It appears to me then that the like recognisance here referred to, is for the payment of debt and costs, in case the judgment shall pass against them. That clearly is a case of a suit in which judgment has not been given in the courts below, and it is therefore unnecessary to decide whether *Grimshaw v. Emerson* is right, and also whether the section is applicable only to courts of record, although there are strong grounds for supposing that to be the case.

*Bosanquet, J.*—It is not necessary to decide whether the 6th section is confined in its operation to courts of record. The 4th and 5th sections afford a strong inference that the 6th section is intended to apply to the same description of courts mentioned in them, but at all events, the 6th clause is not intended to apply to cases which have actually arrived at judgment. It will be unnecessary further to decide the question whether the section is confined to courts of record; but the observation made with regard to taking the like recognisance which is directed to be taken by the same court from which the proceedings are removed, seems to militate very much against the idea of its applying to the inferior courts.

*Coltman, J.*—I agree with the opinion of my learned brothers. It does not appear to me that there is any intention to throw impediments in the way of bringing writs of false judgment; because, if that had been the object, it might well be expected that the 5th clause of the statute would have made some provision upon the subject. The act, however, has provided that there shall be no stay of execution, and that is all that appears to have been thought reasonable and necessary to prevent the party from endeavouring improperly to reverse the judgment below.

*Erskine, J.*—The 5th section must be taken to apply to cases after judgment, and the 6th, to cases before judgment. On the grounds stated therefore, it appears to me that both are intended to apply to courts of record.

Rule absolute, without costs.—*Brookes v. Longdon*, E. T. 1839. C. P.

# CAUSE LISTS.—Easter Term, 1839.

## Exchequer at Pleas.

### SPECIAL PAPER.

Lawrence, Secretary, &c. *v.* Wynn  
Same *v.* Bourne  
Collingbourne *v.* Mantell  
Percival & ors. *v.* Cooke  
\*Hills & ors. *v.* The London Assurance  
Evans *v.* Jones & anor.

Rivis *v.* Watson  
Scott & anor. *v.* Kightley  
Carwardine *v.* Watkins  
Hodges *v.* Watkins  
Wynn *v.* Mitchell  
Braithwaite *v.* Skinner & ors., sued, &c.  
Reynolds *v.* Joy

Same *v.* Nicholls  
\*Thorpe, Clerk *v.* Mattingley  
Rushbury *v.* Sparkes  
\*Reid *v.* Bunny & ors.  
Wilkins & Ux *v.* Down  
Twinberrow *v.* Bancutt  
\*Spry *v.* Broomfield

The causes marked thus \* are Special Cases: the rest are Demurrers.

### NEW TRIALS.

Bennett *v.* Avery  
Smith *v.* Jones  
Duedney *v.* Palmer  
Coyle *v.* Woodley  
Costello *v.* Morgan

Hudson *v.* Nicholson & ors.  
Brashier *v.* Jackson  
Tollit *v.* Sherstone  
Ward *v.* Byrne  
Orlebar *v.* M'Curdy

Buttmer *v.* Hayes  
Pratt *v.* Arnold  
Young *v.* Wigney & another  
Welcome *v.* Upton  
Dixon *v.* Sadler

The Court of Exchequer has not proceeded regularly through the Lists which we inserted at p. 495, Vol. XVII. and therefore the above are added. Our other Lists, we understand, will be found amply sufficient.

## LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

*House of Lords.*

- To secure to Proprietors of Designs for Articles of Manufacture the Copyright of such Designs for a limited time.  
[In Committee.]
- For extending the Copyright of Designs for Calico Printing to designs for printing other woven fabrics.  
[In Committee.]

*House of Commons.*

## ADMINISTRATION OF JUSTICE.

- To improve County Courts.  
[For 2d reading.] Lord John Russell.
- For holding District Sessions of the Peace.  
[For 2d reading.] Lord John Russell.
- For keeping and authenticating non-parochial Registers of Births, Deaths, and Marriages.  
[In Committee.] Lord John Russell.
- For regulating the Police Courts in the Metropolis.  
[For 2d reading.]
- For the better ordering of Prisons.  
[In Committee.] Lord John Russell.
- To regulate and enlarge the Summary Jurisdiction of Justices.  
[For 2d reading.] Lord John Russell.
- For further improving the Police in and near the Metropolis.  
[For 2d reading.] Mr. F. Maule.
- Small Debts Court Bills for the following places:—
- |                    |              |
|--------------------|--------------|
| Aberford,          | Newark,      |
| Belper,            | Newton Abbot |
| Bury, (Lancashire) | Nottingham,  |
| Chesterfield,      | and          |
| Eckington,         | Mansfield,   |
| Glossop,           | Oldham,      |
| Grantham,          | Pontefract,  |
| Halifax, Hudders-  | Rochdale,    |
| field, & Bradford  | Rotherham,   |
| Hatfield,          | Tavistock,   |
| Kingsbridge and    | Warrington,  |
| Dodbrooke,         | West Ham,    |
| Leeds,             | Worksworth,  |
| Liskeard,          | Yorkshire.   |
| Liverpool,         |              |
- To enable the Justices at Quarter Sessions to appoint a Clerk of the Peace in certain Cases. [In Committee.] Mr. Pakington.
- To abolish Grand Juries. Mr. Pryme.
- To improve the Practice and Proceedings in the Court of Pleas of Durham.  
[For 2d reading.] Mr. Harland.
- For regulating the mode of establishing Rules of Proceedings in the Borough Courts of England and Wales.  
[In Committee.]
- To amend the Law relating to double and treble Costs, to pleading the General Issue, and as to Notice and Limitation of Actions.  
[In Committee, 8 May.] Sir F. Pollock.
- To amend the Law relating to the Custody of Infants.  
[For 2d reading 22d May.] Mr. Serjt. Talfourd.

- To amend the Imprisonment for Debt Act, and to Advertisements.  
The Attorney General.  
[In Committee.]

## LAWS OF PROPERTY.

- For the better protection of Purchasers against Judgments, Crown Debts, and Fiats in Bankruptcy.  
[In Committee.] Sir E. Sugden.
- To amend the Law of Copyright.  
[In Committee.]

Mr. Serjt. Talfourd.

- For the Enfranchisement of Lands of Copyhold and Customary Tenure.  
[In Committee, 8th May.]

Mr. James Stewart.

- For securing the Benefit of Inventions in Arts and Manufactures. Mr. Mackinnon.
- To render the Owners of Small Tenements liable to the payment of Rates assessed thereon. Mr. Robert Gordon.  
[In Committee.]

## LAW OF ELECTIONS.

- For the registration of Parliamentary Electors.  
[In Committee.] Mr. Attorney General.
- Controverted Elections. Lord Mahon.  
[For 2d reading.]
- To amend the jurisdiction for the Trial of Election Petitions. Sir R. Peel.  
[For 2d reading.]
- For assimilating the qualification of Electors as Voters for Coroners to that of the constituency of members of Parliament, and taking the Poll at Election for Coroners in one day. Sir H. Fleetwood.
- For extending the qualification of Voters for members in Parliament representing Counties, to the occupiers of houses of the clear annual value of 10*l.* as in Boroughs. Sir H. Fleetwood.

## SHERIFFS—HIGHWAYS AND SEWERS.

- To amend the Laws relating to Highways.  
[In Committee.] Mr. Barneby.
- To alter and amend the Laws relating to Sewers.  
[In Committee.] Mr. Christopher.
- To regulate the expences to be incurred by persons serving the office of High Sheriff in England and Wales.  
[In Committee.]

## THE EDITOR'S LETTER BOX.

The Fourth Criminal Law Report, published in connexion with this work, forms an Appendix to the Seventeenth Volume, just completed, and should be bound up with it.

We think a correspondent who inquires regarding the continuance of actions, brought by a person who becomes insolvent, should make a little search himself, and if he has any doubt afterwards, state the point.

Several letters have been unavoidably postponed.

The Quarterly Digest of all reported cases in all the Courts down to 1st May will be published next Saturday.

# The Legal Observer.

SATURDAY, MAY 11, 1839.

— " Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## THE RESIGNATION OF MINISTERS.

IN our last number we adverted to the condition of the public business, and the impracticability of proceeding with any useful measure while party feeling ran so high, that the existence of an administration might be determined by any given vote. This state of things has, at last, led to the result very generally expected—the termination of Lord Melbourne's ministry; and the public is now acquainted with what has followed. As we are certainly "people with one idea," the fall of this minister and the rise of that, are unimportant, except as connected with the interests of the profession; and we cannot, at the present juncture, but express a hope that some effort may be made to secure the services, especially in the Courts of Equity, of as many eminent lawyers as possible. When we consider the lamentable state of the business—the accumulating arrears in these Courts—we cannot but wish that no mere party considerations will stand in the way of such an arrangement, or at any rate will not render their alleviation hopeless. We should especially deplore, as we have already said, the removal of Lord Cottenham from the Court of Chancery, where he has administered equity with such advantage to the suitor. We cannot but desire, further, that the great learning and talents of Sir Edward Sugden may be rendered available, if possible, in this country. If ever there was a time when the peculiar talents of eminent public men would ensure the success of the separation of the duties of Lord Chancellor, this is the time. In the House of Lords, for instance, putting all

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party consideration aside, would it be difficult to find in Lord Lyndhurst a Head of the Law of the highest judicial talents? and where could a better Chief Judge of Equity be found than either of the other eminent lawyers we have already named? We sincerely trust we shall have speedily to announce that the question of separation has been seriously entertained by the new administration.

Sir Robert Peel first acquired great political fame by his judicious reform of the Criminal Law, and we shall not be surprised to see him proceed in this career. Nay, our readers may expect him to take even a bolder course in this subject than his predecessors. We shall not be amazed if we find him introduce bills for the establishment of Local Courts, for a Rural Police, for a Reform in Chancery, and for the alteration of the Police Offices in the Metropolis. It will be our duty to watch all these measures; and we may here venture to trust that a penny-post will be established. The advantages to the profession, in every way, will be great, and no slight one to our subscribers, both on account of the more easy transmission of this work to all parts of the country, and the facilitating communications as to the wants and desires of the profession. Our correspondence is now considerable, but we are satisfied that it would be at least twenty-fold if our readers could send us their letters for a penny. We would gladly undertake the extra labour.

We shall postpone the announcement of the new legal arrangements until next week, when we shall be able to give a complete account of them.

B

## ON RESCINDING A POLICY OF INSURANCE.

THE subject of Life Insurance is of so much interest to many of our readers that we have from time to time collected the cases respecting it. We now wish to advert to the rescinding a policy of this nature.

The rule as to the delivering up of instruments was thus laid down by the Master of the Rolls, in *Bromley v. Holland*.<sup>a</sup> "Where in equity the plaintiff states a legal objection, the answer very often is, 'Go and avail yourself of it at law: a Court of Equity will not interfere if there is no injustice in the transaction.' I do not deny that in some cases, to avoid suits, and prevent the party being harrassed, equity will order the instruments that may be the objects of those suits to be delivered up; but those cases are very rare, and the relief is always upon terms."

Thus, where the objection appears on the instrument, there can be no loss of evidence by lapse of time, and the question is triable at all times in the same way: it has been held, that the parties have no right to come into equity to have the instrument delivered up.<sup>b</sup> But where a policy of assurance had been obtained by means of fraudulent representations as to the habits and conduct of the assured, it having been stated that the assured, though formerly addicted to intemperate living, had become an altered man, and was at the time of effecting the policy, of temperate habits, whereas the contrary was the truth, Mr. Baron *Alderson*, on a bill filed by the directors of the assurance society, directed the contract to be rescinded, on the ground that the question in issue could not be equally well tried at all times; for it was clear that it could never be tried on such just and equitable grounds as these."

Another difficulty in suits of this nature on policies of assurance is, the question of parties, viz. as to whether it be necessary to bring the shareholders in the company as well as the trustees of the company, before the Court. In the case of *Fenn v. Craig*,<sup>c</sup> the objection was taken by demurrer, and Baron *Alderson* thus adverts to it:—"As to the demurrer for want of parties, I think that also must be overruled. The rule of equity on this point is laid down in *Wilkins v. Fry*, 1 Mer. 262, where it is stated by Sir *William Grant*, that, though at law, all

persons who have a joint interest must join in an action, yet in equity it is sufficient that all persons interested in the subject of the suit should be before the Court, either in the shape of plaintiffs or defendants. No doubt, where parties have precisely the same equity, they should sue on behalf of themselves and all others jointly interested with them, or else allege some reason why they cannot all join as plaintiffs. But here, the plaintiffs and the defendants have different interests. To a certain extent, indeed, the shareholders of the Asylum Office may have an interest in common with the plaintiffs, namely, in having the instrument delivered up to be cancelled; but the plaintiffs, as trustees, are interested beyond that, namely, in the action at law to be brought on the policy. No doubt, at the same time that the plaintiffs are so interested, the shareholders are likewise interested in the policy, in one of two ways; namely, as retaining the instrument as a valid instrument, or, as desirous in common with the present plaintiffs to have it delivered up; therefore, they may be made either plaintiffs or defendants to a suit of this nature; but it appears to me more convenient, considering the difference of interest to which I have adverted, that they should be made defendants. It is then stated, that the defendants, the directors of the Asylum Office, are the only persons whom the plaintiffs know to be interested as shareholders. If it be true that they do not know the names of the other persons interested, (and I am bound upon demurrer to take that allegation to be true) can it be an absurd conclusion for a court of justice to come to, that they are not bound to do an impossibility in bringing such persons before the Court? To come to any other conclusion seems to me so gross an absurdity that I am not disposed to make a precedent in favour of such a course."

THE  
PRESENT STATE OF THE LAW.

WE recently brought Mr. Miller's work on the state of the Law,<sup>a</sup> under the notice of our readers, with reference to the arrears in Equity. But it is not confined to this subject. It will not, perhaps, convey much information to our readers. We agree with the greater part of the recommendations

<sup>a</sup> 5 Ves. 618.

<sup>b</sup> *Simpson v. Lord Howden*, 3 M. & C. 97.

<sup>c</sup> 3 Yu. & Col. 216.

<sup>a</sup> On the unsettled condition of the Law and its Administration. By John Miller, Esq., of Lincoln's Inn: London, 1839.

which Mr. Miller makes,—indeed they are those which for the last eight years we have been endeavouring to enforce and illustrate;—and although the author is perhaps, a little dogmatical in laying down his opinions, yet we consider he has rendered an acceptable service to the profession by making them known. The present work is a sort of Appendix to a volume on the state of the Civil Law, published in 1825, a valuable work, but superseded by the rapid progress of law reform since it was written.

“The result, he says, shewed that even at that period the legal profession in general—a proportion of the members of the legislature—and the best informed part of the community, were better prepared to listen to disquisitions on topics of such a character than I was inclined to anticipate. Short as the space is which has elapsed, times have most materially altered. Debates in both Houses of Parliament; reports of numerous sets of Commissioners appointed by government; books, pamphlets, and parliamentary proceedings, all aiming at the improvement of the law and administration of justice, have followed each other in quick and uninterrupted succession.

“The improvement of the jurisprudence of the country is not a fit subject for political agitation. It soon fatigues the understandings of the multitude, and excites neither their prejudices nor their passions. It is a cause, nevertheless, which is gradually and decidedly gaining ground. A persuasion is beginning to pervade all classes that the laws under which we live are neither so wise, intelligible, or accessible as they ought to be. Hints to that effect, are occasionally and even unconsciously dropt where we would least expect them; and like gleams of lightning shooting through a lowering sky, give notice of the danger which is moving onward. In seasons when scarcely any object is gained except by clamour and intimidation, these gentle intimations may, for a while, be overlooked or disregarded. But if the wishes of the people on this head should ever attain that prevalence and consistency which I believe them to be fast acquiring, they will ultimately force themselves upon the notice both of the heads of the law and of the government. The longer the remedy is delayed it will require to be more extensive and effectual.”

THE  
SUGGESTIONS OF THE CRIMINAL  
LAW COMMISSIONERS.

THE Fourth Report of the Commissioners on Criminal Law, which we have printed as an Appendix to our last volume, appears to be the most important of the series. It contains not only many valuable suggestions for the improvement of the great body

of the Criminal Law, but a digest of several important parts of it, which cannot fail to be both useful and interesting to the profession. The practitioner will here find the contents of many volumes condensed into a comparatively small space; and the student will acquire a very complete view of the principles of our criminal code.

Amongst other proposed improvements in the classification of offences, the Commissioners propose as to *Treason*—

That it should be strictly conformable to that which has always been considered to be the real principle of the offence, namely, that the crime should consist of a direct attack upon the person or authority of the sovereign, as head of the state. In order, therefore, to render the law consistent in this respect, they propose to remove from the present list of treasons such offences as do not come within the principle they have noticed, and to insert them under the heads of felonies or misdemeanors, with appropriate punishments. Thus the offence of slaying the Lord Chancellor or a Judge may be placed under the head of felony as an aggravated murder: and cases of riotous and tumultuous meetings, which can be no longer considered to fall within the Statute of Treasons, might be denominated felonies or misdemeanors, according to the aggravations by which they are attended.

The Commissioners then proceed to the class of offences denominated *Felonious*.

We propose (they say), to retain felony as a general term of classification. Felony, in our criminal law, constitutes at present an intermediate class between treason and misdemeanor, and is distinguishable from both by many peculiarities, although, for technical reasons, treason has been held to include felony. The crime of felony had its origin in a very remote period of our history, and was founded upon feudal principles. Its incidents were not formerly, as they are now, of a merely arbitrary nature, peremptorily annexed to certain criminal acts, without any apparent reference to rule or principle. It was, in its more prominent features, the natural effect of the feudal relations from which it sprung. Thus the main incident of felony in former times, the *forfeiture* of the tenant's land to the lord of the fee, was a necessary consequence of the dissolution of the mutual compact which formed the essence of the tenure, by the misconduct or felony of the tenant.

They next treat of the large department of offences comprised under the head of *Misdemeanors*.

The term “misdemeanor” (which we also retain as descriptive of a class), will embrace all crimes of an inferior degree, which do not fall within either of the other divisions. A misdemeanor is, in truth, according to its usual acceptation, any offence lower in the scale of crime than felony, and the word is



generally used in contradistinction to felony. According to the present arrangement of indictable offences by our law, the distinction between felonies and misdemeanors is entirely arbitrary, and affords by no means a just line of division between a higher and a lower degree of criminality. In several instances misdemeanors by the present law are offences of greater enormity, and are productive of more mischief and danger to society than many felonies; as, for example, perjury, forgery at common law, riots and various kinds of cheats. At the same time, therefore, that we think it convenient to adopt the term to denote a general division of inferior crimes, we propose to introduce an alteration in the law by transferring several offences, which are now misdemeanors, into that list of felonies; and it may perhaps be found expedient to reduce some felonies to the degree of misdemeanors. The change made by these alterations, will, however, be little more than nominal, except so far as may regard the measure of punishment; for the recent improvements in the Criminal Law, including the opportunity of full defence by counsel in felony, have already so far broken down the ancient divisions between felony and misdemeanor, both as to procedure and penal consequences, as to leave few distinguishing incidents remaining, with the exception of forfeiture.

The general divisions of the Digest, as regards indictable offences, will therefore be *treasons, felonies, and misdemeanors*: and under some one of these heads the whole of the present law, both respecting the definitions of indictable offences and procedure, with such modifications and partial alterations as the Commissioners are authorised to suggest, will be comprised.

The next part of the Report to which we may call the attention of our readers, is the proposed improvements in the several degrees of *punishment*. The Commissioners propose to reduce all punishments in respect of indictable offences to those specified in the following or some other similar scale, by which the classes shall be greatly reduced in number, so as not, at the furthest to exceed twenty:—

1. Death on conviction of treason—on conviction of felony.
2. Transportation for life, or some less term of years, or imprisonment not exceeding five years.
3. Transportation for fifteen years or some less term, or imprisonment for any term not exceeding four years.
4. Transportation for the term of ten years, or imprisonment for any term not exceeding three years.
5. Imprisonment for any term not exceeding five years.
6. Imprisonment for any term not exceeding four years.

7. Imprisonment for any term not exceeding three years.

8. Imprisonment for any term not exceeding two years.

9. Imprisonment for any term not exceeding one year.

10. Fine at discretion, either simply, or in addition to some other punishment.

11. Fine not exceeding five hundred pounds, either simply, or in addition to some other punishment.

12. Fine not exceeding two hundred pounds, either simply, or in addition to some other punishment.

13. Fine not exceeding one hundred pounds, either simply, or in addition to some other punishment.

14. Fine not exceeding fifty pounds, either simply, or in addition to some other punishment.

15. Fine not exceeding twenty pounds, either simply, or in addition to some other punishment.

We have now to notice very summarily the several Digests which the Report contains of important branches of the Criminal Law.

#### *Homicide.*

The following analysis and summary will serve to explain the arrangement of the Digest of the Law of Homicide.

Criminal homicide is,

1. Murder; 2. Manslaughter; or 3. Self-murder.

1. Murder is of three kinds:

1. Voluntary homicide not justifiable, excusable, or extenuated by circumstances;

2. Homicide in committing or attempting to commit specified crimes;

3. Homicide committed in unlawfully resisting officers or others acting in execution of the law.

Homicide is justifiable or excusable:

For the execution or advancement of the law;

For defence of person or property;

For self-preservation.

Homicide is extenuated where it is not deliberate, but is committed—

Under the influence of provocation, arising from a sufficient cause;

Or, is attributable to the influence of fear or effect of surprise.

2. Manslaughter is either—

1. Voluntary but extenuated homicide;

2. Involuntary homicide, not merely by misadventure.

Involuntary homicide, not merely by misadventure, includes—

1. Homicide resulting from any act or omission done or omitted with intent to occasion bodily harm to any other person;

2. Homicide resulting from any wrong occasioned to the person of another;

3. Homicide in committing or attempting to commit offences attended with risk to the person;
4. Homicide resulting from any act or unlawful omission done or omitted without due caution.

### 3. Self-murder.

#### *Other Offences against the Person.*

Attempts to murder. Attempts to maim, &c. Sending explosive substances. Setting spring guns, &c. Trying to procure abortion. Endeavouring to conceal the birth of children by secret burying, &c. Rape, &c.

#### *Theft.*

Definition of theft. Effect of consent. Means of taking immaterial. Effect of permitting offender to take. What constitutes a wrongful taking and removal. What property the subject of theft. Ownership of property. Fraudulent intent. Right of property not altered by theft. Restitution no excuse. Definition of stealing.

#### *Robbery.*

Definition of robbery. What constitutes a stealing by violence. What constitutes a stealing by threat of violence to the person. Actual fear is not necessary. Violence or apprehension of violence, is essential. Property may be taken in the absence of the owner, if abandoned under apprehension of violence. It is robbery although a person voluntarily expose himself to the offence. Aggravated robbery. Assault with intent to rob.

#### *Aggravated Theft.*

Stealing from the person. Demanding property by force. Sacrilege. Stealing in dwelling-houses, &c. Stealing, accompanied by certain aggravations. Cattle stealing. Stealing from ships, docks, quays, &c. Stealing from ships in distress. Stealing goods in progress of manufacture. Stealing by clerks or servants.

#### *Extortion by Threats.*

Obtaining property by threat of accusing of unnatural crimes. What property the subject of extortion by threats. Threatening to accuse of unnatural crimes, with intent to extort property. Inducing a person, by violence or threats, to execute, &c. deeds, &c. Threatening to destroy property with intent to extort.

#### *Obtaining Property by False Pretences.*

Definition of the offence. What property the subject of the offence. Description of the false pretence essential to the offence. Offender liable to the penalties of this law, although guilty of the theft.

#### *Cheats.*

Definition of the offence. Definition of false personation. Personating persons entitled to allowances from the Compassionate fund. Per-

sonating owners of stock. Personating persons entitled to allowances for service in the army. Taking with intent to cheat.

#### *Embezzlement.*

Definition of embezzlement. Rules relating to possession. No defence to charge of embezzlement that circumstances amount to theft. Owner cannot be guilty of embezzlement. Offence not embezzlement where owner parts with right of property to the offender. Exception in cases of parties liable to penalties of a lower class. Act of owner affording opportunity for the offence, no defence. Embezzlement by clerks or servants. Embezzlement by bankers, brokers, &c. Embezzlement by factors, &c. Laws against embezzlement not to affect civil remedy. Bankers, &c. not to be prosecuted for embezzlement respecting acts disclosed under process. Embezzlement by officers of the Bank of England and South Sea Company.

#### *Malicious Injuries to Property.*

What malice sufficient. Setting fire to a dwelling house, any person being therein. Riotously demolishing, &c. buildings. Setting fire to buildings with intent to defraud. Setting fire to vessels with intent to murder. Exhibiting false lights or signals. Setting fire to vessels with intent to destroy the same. Damaging ships otherwise than by fire. Destroying wrecks. Setting fire to coal mines. Setting fire to agricultural produce, &c. Destroying sea banks, &c., or works on rivers or canals. Doing damage to obstruct the navigation of rivers or canals. Destroying public bridges. Destroying turnpike gates, toll houses, &c. Destroying trees in parks, gardens, &c. Destroying trees elsewhere. Malicious damage done to trees to the amount of 1s. Destroying fruit, &c. in gardens, &c. Destroying fixtures in public places. Destroying certain goods in the loom, &c. Destroying thrashing machines and certain other machinery. Drowning mines. Destroying engines, &c. used in mines. Destroying dams of fisheries, &c. Destroying mill dams. Killing or maiming cattle. Setting fire to certain crops, &c. Destroying hop binds. Setting fire to buildings in towns, &c. Preventing the conveyance of corn, &c. to market. Destroying granaries. Destroying buoys, &c.

#### *Special Provisions for the Protection of Particular Property.*

Deer stealing. Assaulting deer keepers. Assaulting game keepers. Taking hares or conies in the night time. Taking fish in water belonging to a dwelling house. Stealing oysters from oyster beds. Dredging for oysters. Damaging anything attached to therewith with intent to steal it. Stealing or destroying written instruments of justice. The like of testamentary instruments. Offences against the Post Office.

## NEW BILLS IN PARLIAMENT.

## PURCHASERS' PROTECTION.

[Concluded from page 4.]

8. That no judgment, statute or recognizance, which shall hereafter be obtained or entered into in the name or upon the proper account of her Majesty, her heirs or successors, or inquisition by which any debt shall be found due to her Majesty, her heirs or successors, or obligation or specialty which shall hereafter be made to her Majesty, her heirs or successors, in the manner directed by an act passed in the thirty third year of the reign of his late Majesty King Henry the eighth, intituled "The Erection of the Court of Surveyors of the King's Lands, and the Names of the Officers there, and their Authority," or any acceptance of office which shall hereafter be accepted by officers whose lands shall thereby become liable for the payment and satisfaction of arrearages under the provisions of the act passed in the thirteenth year of the reign of her late Majesty Queen Elizabeth, intituled, "An Act to make the Lands, Tenements, Goods and Chattels of Tellers, Receivers, &c. liable to the payment of their Debts," shall affect any lands, tenements and hereditaments, as to purchasers or mortgagees, unless and until a memorandum or minute, containing the name and the usual or last place of abode, and the title, trade or profession of the person whose estate is intended to be affected thereby, and also in the case of any judgment, the court and the title of the cause in which such judgment shall have been obtained, and the date of such judgment, and the amount of the debt, damages and costs thereby recovered, and also in this case of a statute or recognizance, the sum for which the same was acknowledged, and before whom the same was acknowledged, and the date of the same, and also in the case of an inquisition, the sum thereby found to be due, and the date of the same, and also in the case of an obligation or specialty, the sum in which the obligee shall be bound, or for which the obligation or specialty shall be made, and the date of the same, and also in the case of acceptance of office, the name of the office and the time of the officer accepting the same, shall be left with the senior Master of the said Court of Common Pleas, who shall forthwith enter the same particulars in a book, to be intituled, "The Index to Debtors and Accountants to the Crown," in alphabetical order, by the name of the person whose estate is intended to be affected by such judgment, statute or recognizance, inquisition, obligation or specialty, or the acceptance of any office; and such officer shall be entitled for any such entry to the sum of shillings; and all persons shall be at liberty to search the same book, and also the other book to be kept according to the provisions of the said recited act of the first and second years of the reign of her present Majesty, or either of the said books, on payment of the sum of one shilling, whether one only or both of the

said books shall be searched, and no multiplication of books is to increase the fee.

9. That whenever a quietus shall be obtained by a debtor or accountant to the crown, and an office copy thereof shall be left with the senior master of the said court of Common Pleas, together with a certificate, signed by the attorney general, that the same may be registered, the said master shall forthwith enter the same in the said book of debtors and accountants to the crown, in alphabetical order, by the name of the person whose estate is intended to be discharged by such quietus, with the date, and shall for any such entry be entitled to a fee of shillings.

10. And whereas it is expedient to make further provision for the discharge of an estate belonging to a debtor or accountant to the crown, from the claim of the crown, in the hands of a purchaser or mortgagee, although the debt or liability shall not be fully discharged; Be it therefore enacted, that it shall be lawful for the commissioners of her Majesty's Treasury of the united kingdom of Great Britain and Ireland for the time being, or any three of them, by writing under their hands, upon payment of such sums of money as they may think fit to require into the receipt of her Majesty's Exchequer, to be applied in liquidation of the debt or liability of any debtor or accountant to the crown, or upon such other terms as they may think proper, to certify that any lands, tenements or hereditaments of any such crown debtor or accountant shall be held by the purchaser or mortgagee, or intended purchaser or mortgagee thereof, his or their heirs, executors, administrators and assigns, wholly exonerated and discharged from all further claims of her Majesty, her heirs or successors, for or in respect of any debt, claim or liability, present or future, of the debtor or accountant to whom such lands, tenements or hereditaments belonged, or in cases of leases for fines, to certify that the lessees, their heirs, executors, administrators and assigns shall hold, so exonerated and discharged, without prejudice to the rights and remedies of the crown against the re-union of the lands, tenements or hereditaments comprised in any such leases, and the rents and covenants renewed and contained by and in the same; and thereupon the same lands tenements or hereditaments shall respectively be held accordingly wholly exonerated and discharged as aforesaid, but in the cases of leases without prejudice as aforesaid.

11. That any such certificate, or the discharge of any such lands, tenements or other hereditaments by virtue of this act, shall in no wise impeach, lessen or affect the right or power of her Majesty, her heirs or successors, to levy the whole of any debt or demand which may at any time be due from any such debtor or accountant to the crown, out of or from any other lands, tenements or hereditaments which would have been liable thereto, in case no such certificate had been granted and no such discharge had been obtained.

12. And whereas it is expedient that further

provision should be made for the protection of purchasers against secret acts of bankruptcy and flats in bankruptcy; Be it therefore enacted, that all conveyances by any bankrupt, bona fide made and executed before the date and issuing of the fiat against such bankrupt, shall be valid, notwithstanding any prior act of bankruptcy by him committed, provided the person or persons to whom such bankrupt so conveyed had not at the time of such conveyance notice of any prior act of bankruptcy by him committed.

13. That no purchase from any bankrupt, bona fide and for valuable consideration, where the purchaser had notice at the time of such purchase of an act of bankruptcy by such bankrupt committed, shall be impeached by reason thereof, unless the commission against such bankrupt shall have been sued out within twelve calendar months after such act of bankruptcy.

14. That this act shall not extend to Ireland.

#### NOTICES OF NEW BOOKS.

*Questions in Common Law, Equity, Bankruptcy, Criminal Law, and the Jurisdiction of all the Courts in England and Wales; with References to Blackstone and other authorities: adapted to the Compiler's "Outlines of Law, Civil and Criminal."* By Robert Maugham, Secretary to the Incorporated Law Society of the United Kingdom.—London: Spettigue, 1839.

THE Author of this collection of Questions, observes in his Preface, that "It is remarkable that the practice, in almost all the Sciences, of testing the progress of the student by well-framed Questions, has been but sparingly adopted in the study of the English Law:—a study, however, (he remarks) to which the *catechising* process is peculiarly suited. The main business of the client with his solicitor is to ask questions and receive answers on points of Law and Practice; and the communications between the solicitor and his counsel approach still more nearly to the form of interrogatory and examination."

He then proceeds to notice the recent change in the mode of ascertaining the qualification of Candidates for Admission on the Roll of Attorneys, which has occasioned a demand for new means of instruction, and further facilities in the acquisition of legal knowledge; and it has been supposed, he says, that the examination into the fitness and capacity of these candidates has thrown additional duties and obligations on solicitors in regard to the instruction of their articulated clerks. Doubtless, as well for the credit of

their own office, as for the sake of their pupils, they will be inclined to aid their progress so far as may be practicable. Their contract remains, as of old:—"by the best ways and means they can, and to the utmost of their skill and knowledge, to teach and instruct the clerk in the practice or profession of an attorney or solicitor."

This point Mr. Maugham discusses to the following effect:—

It may be a question, however, whether it is the duty of the solicitor to bestow any large share of time in the task of personal "teaching and instructing," if by this should be meant a kind of scholastic or book-teaching. It is the interest of the learner that the instruction he receives should be communicated in the course of *real business*, in the conduct of actions and suits, and other legal affairs. The knowledge thus acquired will never be effaced. The primary duty of the attorney consists in devoting the best powers of his mind to the interests of his clients. They have the first claim. It is for them he is authorised to practise, and it must be presumed that the contracting parties were fully cognizant of this duty when the articles were entered into.

The main purpose of placing a clerk in the office of a solicitor, must evidently be to afford him an opportunity of actual practice—of seeing the way in which legal business is done, and transacting it himself. He is "bound to serve as a clerk in the proper business of an attorney." During the hours of business, he should be actively engaged in the suits and affairs in progress. He will of course refer to the proper books for information, and ascertain not only the best way of taking any legal step, but the reason for its adoption; and his master no doubt, will aid him in his laudable desire to attain a scientific knowledge of his profession.

In this state of things it has been the object of the Compiler of this Work (as part of a series which he has submitted to the profession) to place himself in the situation of a solicitor, anxious to discharge his duty, as well to his clients as to his articulated clerks, and to consider the best means of discharging that duty in regard to the *studies* of the latter. It is manifest that a solicitor can rarely possess leisure to frame a collection of Questions for the purpose of drawing forth the legal knowledge of his clerk in all the branches of Law and Practice to which his future attention may be directed. But it is quite practicable, if a Book of Questions be properly framed, with references to works of authority wherein correct answers may be readily found, that the solicitor will then be enabled to point out a certain number of Questions which he may deem the most proper for a given *exercise*, and require the clerk to sit down and answer them from recollection, and without the assistance of books in his presence. With this object, the present collection of Questions has been prepared.

Such being the Compiler's design, he

next proceeds to explain the mode in which he has endeavoured to carry it into effect.

There has been considerable difficulty in framing the terms of the Questions, in order to avoid stating them too *generally* on the one hand, or making them too *leading* on the other. In the former, the answers would probably be either very vague and unsatisfactory, or extend to a lengthened dissertation, both of which modes should be avoided. In the latter the answer would be suggested by the question, and the student might *guess* whether it should be in the affirmative or negative, and a correct answer would be no proof of actual knowledge.

Amidst these opposite difficulties the endeavour has been to steer a middle course, and so to shape the questions as merely to suggest the kind or extent of information required, without disclosing its particulars. It has also been deemed proper not to put any *catching* questions, inasmuch as they tend, when discovered, to excite a suspicion in the mind of the student that other questions, although not so intended, are also of the same character. It has been impossible, however, in several instances, after stating a question in somewhat general terms, to avoid following it by inquiries in detail which suggest the answer to the previous question.

The following advice is then given regarding the method of study:—

The student who is really anxious for improvement will patiently answer one question to the best of his ability before he proceeds to another, and will not attempt to guess an answer by reading the subsequent questions. The difficulty we are noticing may be likened to that which exists in framing *written* interrogatories for the examination of a witness. The latter questions are founded on the anticipation of certain points of evidence being disclosed in reply to the previous interrogatories. The difficulty cannot be altogether surmounted, except by an *oral* examination.

It is suggested to the student that after reading each question he should turn to the authority referred to, and write an answer as concisely as possible. After having gone through one of the sections, he should then lay aside his written answers, and ascertain whether he can recollect the several points without assistance. It would of course be preferable if, instead of this self-examination, he were assisted by some friend or fellow-student. This mode, it is conceived, will be the most advantageous for practical improvement; and when the student has somewhat exercised himself on an important point of law, the solicitor should apply the test we have recommended for ascertaining the clerk's industry and progress.

This collection of Questions, it may be proper to add, is founded principally on the third and fourth volumes of Blackstone's Commentaries, incorporating all the recent

statutes and decisions applicable to those volumes, and omitting or curtailing such parts as are not likely to be frequently useful in the ordinary routine of professional business. Some Questions, however, have been put of a more general nature, to suit the taste of different students, which solicitors in the preliminary trials of their clerks may think proper to omit. It has been deemed unnecessary to refer to all the old Text Books and Reports, long prior to the time of Blackstone, as every student has the Commentaries at hand; but where a question is grounded upon comparatively recent enactments or decisions, a precise reference has been made to the statute or report in which an answer will be found.

The work, as stated in the title-page, is adapted to the Author's Outlines of Law, and the page in which an answer will be found is given at the end of every question. The accompanying references to Blackstone, and the several Reports and other authorities will enable the Student to prepare his answers from various sources.

The following are the Contents:—

#### *Questions in Common Law.*

1. Injuries affecting Personal Security.
2. Injuries affecting Personal Liberty.
3. Injuries to Relative Rights:—Husband, Parent, Guardian, Master.
4. Injuries to Personal Property in Possession.
5. Injuries affecting Personal Property in Action, or Breach of Contract.
6. Injuries affecting Real Property:—Ouster of Freehold.
7. Injuries to Real Property:—Dispossession of Chattels Real.
8. Injuries to Real Property:—Trespass.
9. Injuries affecting Real Property:—Nuisance.
10. Injuries to Real Property:—Waste.
11. Injuries to Real Property:—Subtraction.
12. Injuries to Real Property:—By Disturbance.
13. Injuries by Inferior Courts.
14. Injuries by or affecting the Crown.

#### *Questions in Equity.*

1. General Nature of Equity.
2. Relief afforded in Equity, in relation to Courts of Law.
3. Of Relief and Protection in regard to Infants.
4. Of Wards in Chancery.
5. Of Relief and Protection afforded as to Married Women.
6. Of Relief and Protection relating to Idiots and Lunatics.
7. Relief relating to Charities.
8. Of the Specific Performance of Agreements.
9. Of Trusts.

#### *Questions in Bankruptcy.*

1. Persons liable to the Bankrupt Laws.
2. Of the Act of Bankruptcy.
3. Of the Petitioning Creditor's Debt.
4. The Fiat.
5. Proof of Debts.

6. Validity of Transactions before the Fiat.
7. Of Disputing the Validity of the Fiat.
8. Liabilities and Protection of the Bankrupt.

*Questions on the Law of Distress.*

1. Injuries to which a Distress applies.
2. What things are distrainable.
3. Of taking and disposing of Distresses.

*Questions on the Law of Arbitration.*

*Questions in Criminal Law.*

1. The Nature of Crimes.
2. Persons capable of committing Crimes.
3. Principals and Accessories.
4. Offences against God and Religion.
5. Offences against the Law of Nations.
6. High Treason.
7. Felonies injurious to the King's Prerogative.
8. Præmunire.
9. Misprisions and Contempts affecting the King and Government.
10. Offences against Public Justice.
11. Offences against the Public Peace.
12. Offences against Public Trade.
13. Offences against the Public Health, and Public Police or Economy.
14. Homicide.
15. Offences against the Persons of Individuals.
16. Offences against the Habitations of Individuals :—Burglary.
17. Burning or Destroying Houses, Buildings, or Ships.
18. Offences against the Property of Individuals :—Theft, or Stealing from the Person, and Robbery.
19. Offences against Private Property :—Malicious Injuries.
20. Offences against Private Property :—Forgery.
21. The Means of Preventing Offences.

*Questions on the Jurisdictions of the Courts.*

1. Courts in General.
2. Jurisdiction of the Inferior Courts of Common Law.
3. Jurisdiction of the Superior Courts of Common Law :—
  1. Concurrent Jurisdiction.
  2. Exclusive Jurisdiction of the Common Pleas.
  3. Exclusive Jurisdiction of the Queen's Bench.
  4. Exclusive Jurisdiction of the Exchequer.
4. Jurisdiction of the Superior Courts of Equity :—
  1. Concurrent Jurisdiction.
  2. Exclusive Jurisdiction of the Court of Chancery.
  3. Exclusive Jurisdiction of the Court of Exchequer.

5. Jurisdiction of the Courts of Bankruptcy and Insolvency :—

1. Court of Bankruptcy.
2. Insolvent Debtor's Court.

6. Jurisdiction of the Courts of Assize and Nisi Prius.

7. Jurisdiction of the Ecclesiastical and Maritime Courts :—

1. The Ecclesiastical Courts.
2. The Maritime Courts.

8. Courts of Special or Local Jurisdiction.

9. Jurisdiction of Courts of Appeal :—

1. The Exchequer Chamber.
2. Judicial Committee of the Privy Council.
3. House of Peers.

10. Courts whose Jurisdiction has been transferred, abolished, or become obsolete.

11. Criminal Courts of a Public and General Jurisdiction :—

1. High Court of Parliament.
2. Court of the Lord High Steward.
3. Court of Queen's Bench.
4. High Court of Admiralty.

12. Criminal Courts of a Local Jurisdiction :—

1. Oyer and Terminer, and General Gaol Delivery.
2. Central Criminal Court.
3. Quarter Sessions.
4. 5, 6, & 7. The Sheriffs' Tourn, Court Leet, Court of the Coroner and Clerk of the Market.

13. Criminal Courts of Private and Special Jurisdiction.

The Questions in Equity and Bankruptcy are necessarily founded upon matter not contained in the Commentaries, the former subject being very briefly treated of, and the latter barely mentioned by Mr. Justice Blackstone. The Questions on Equity, and the Outlines to which they refer, are principally taken from Mr. Fonblanque's Treatise, incorporating, wherever requisite, the new statutes and decisions. The Questions in Bankruptcy are, of course, framed on the principal act of 6 G. 4, c. 16, with the Bankruptcy Court Act, and the decisions on important points of frequent occurrence in this branch of law. The Questions on the Jurisdiction of several of the Courts, and on various chapters both in the Common Law and Criminal Law, are grounded on the numerous changes which have been effected of late years in those departments.

**CANDIDATES WHO PASSED AT THE EASTER TERM EXAMINATION, 1839.**

*Name of Applicant.*  
Abbott, Vernon Montague

Ainsworth, Samuel  
Allatt, William  
Allee, Lawrence Turton  
Allison, Henry  
Aller, James  
Baker, Henry

Barber, George  
Barton, Richard Carrol

*Name & Residence of Attorney to whom articulated, assigned, &c.*  
Charles Murray, 59, Chancery Lane; James Archibald Murray, 59, Chancery Lane.

John Sudlow, Manchester.  
John Sanderson Archer, Ossett, Yorkshire.  
James Ralfe, Winchester.

Robert Nesham, Darlington, Durham.  
Thomas Hippiusley Jackson, Stamford, Lincoln.  
William Mitchell, Petersfield; assigned to William Lawrence Bicknell, 57, Lincoln's Inn Fields.  
John Lambert, Alnwick, Northumberland.  
Joshua Mayhew, 26, Carey Street.

<i>Name of Applicant.</i>	<i>Name &amp; Residence of Attorneys to whom articulated, assigned, &amp;c.</i>
Beesley, James	William Walford, Banbury.
Benn, John Higginson	William Wise, Rugby.
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Bird, John Proctor	William Smith, 22, John Street, Bedford Row.
Bishop, Frederick	William Bishop, Shelton Hall.
Bradley, Edward Gould	Robert Clarke, Queen Square, Bath.
Brook, John Calver	Messrs. Bohun and Rix, Beccles.
Brooks, Abraham James	David William Weddell, Gosport; William Minchin, Portsea.
Brooks, John, the younger	Alfred Higginbottom, Ashton-under-Lyne.
Bryan, James	Charles Edward Hunt, 2, Barnard's Inn.
Bunting, Jabez, the younger	Thomas Percival Bunting, Manchester.
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Chalmers, Charles Boorn	Charles Carter, Barnstaple; Evan Price, Great Torrington.
Challinor, Edward	John Norris, Manchester.
Clough, Thomas William	William Clough, Pontefract.
Clutton, John, the younger	John Clutton, the elder, High Street, Southwark.
Coles, James Bond	Thomas Milliken Mills, Taunton; assigned to John Manning Innes, Hazeland, Taunton.
Cooper, Samuel Nicholas	William Read King, 11, Serjeant's Inn, Fleet Street.
Cory, Charles	Robert Cory, the younger, Great Yarmouth.
Cory, Edward James	Charles Kingdon, Holsworthy, Devon.
Crockett, Richard Singleton	Edward Mortimer Green, Ashby-de-la-Zouch, Leicester; assigned to Henry Turner, Wolverhampton; assigned to Campbell Wright Hobson, 13, Warwick Court, Holborn.
Cronhelm, John	Edward Harker Soulby, Leeds; assigned to Edwin Eddison, Leeds.
Davenport, Robert	John Marriott Davenport, Oxford; assigned to Joseph Blower, 61, Lincoln's Inn Fields.
De Medina, Henry Augustus	Edward Rice, 2, Verulam Buildings.
Dunn, Henry Thomas	John Dunn, Durham; William Vizard, 51, Lincoln's Inn Fields.
Dyson, Matthew Henry Moorhouse	Martin Kidd, Holmfirth.
Edwards, James Barber	John Mercer, Deal.
Evaus, William Cornwallis	William Richard Berryman, Devonport.
Gamble, George Spencer	Robert Crabtree, Halesworth, Suffolk.
Girdlestone, William Bolton	James Turner, 41, Bedford Row; assigned to Thomas Garwood, Wells next the Sea.
Gibbons, Robert	Samuel Bellamy, Gainsburgh.
Gilham, John	John Shearman, 21, Bartlett's Buildings.
Good, George Frederick	John Fiske, Saffron Walden.
Govett, John Clement	Charles John Shebbeare, Grove Cottage, Clapham; assigned to Benjamin Field, Lincoln's Inn Fields.
Gregory, William, the younger	William Gregory, the elder, Bristol.
Griffin, William Henry	William Henry Green, 80, Basinghall Street.
Grubb, William Dawson	Henry Heald, 16, Austin Friars.
Hanbury, Thomas James	Thomas Sewell, Newport, Isle of Wight; assigned to Robt. Carr Foster, John Street, Bedford Row.
Hayward, William Webb	Thomas Fellowes, Rickmansworth, Herts.
Herbert, Samuel	George Ware, 33, Blackman Street, Southwark.
Hill, Henry Edward	Edward Castleman, Wimborne Minster.
Horne, Robert Ayder	Francis Price, Cheltenham.
Houchen, John	George Lucas, Great Yarmouth.
Hulbert, William	John Matthews, Hungerford; assigned to Thomas Hulbert, Hungerford.
Innis, Charles, the younger	Abraham King, 81, Castle Street, Holborn; William Mosson Keams, 5, Red Lion Square.
Jackson, Thomas Henry	Nathaniel Griffin, Portsea, Southampton; George Caught, Portsea.
Kay, Samuel, the younger	Samuel Kay, the elder, of Manchester.
Kettle, Rupert Alfred	Richard Fryer, the younger, Wolverhampton, Stafford;
Kingdon, Joseph Francis	Edward Henry Rickards, Lincoln's Inn Fields.
Kitson, Edward Bellamy	Francis Kingdon, Great Torrington; assigned to William Gill Glubb, Great Torrington.
Knope, John Williams	John Marsh Templeman, Crewkerne.
Latham, John	William Laalett, Worcester.
	Thomas Ives Brayne Hestage, Northwich, Chester; assigned to William Latham, Sandbach.

<i>Name of Applicant.</i>	<i>Name &amp; Residence of Attorneys to whom articulated, assigned, &amp;c.</i>
Lloyd, Robert	David Evans, Liverpool; assigned to Joseph Peers, Ruthin.
Margetts, Henry Clarke	John Lawrence, St. Ives.
Marsh, John	Thomas Edmund Marsh, Llanidloes; assigned to Thomas Yates, Welshpool; assigned to James Cross, 9, Staple Inn.
Marshall, Henry Fighbing	John Clutton, 48, High Street, Southwark.
Munday, William	William Smith, 22, John Street, Bedford Row.
Nash, John Howell	John Nash, Chepping Wycombe.
Parker, William Phillips	John Collier, 9, Carey Street, Lincoln's Inn Fields.
Petch, Robert, the younger	Robert Petch, Kirbymoorside.
Pollock, Lodowick Anderson	George Redaway, 16, Clement's Inn; assigned to Thomas Wellard King, Ramsgate; assigned to Thomas Hodges, Grove Snowdon, Ramsgate.
Prideaux, George Fisher	Neast Greville Prideaux, Bristol.
Pruen, Septimus Alexander Co- nant.	Edward Pruett, Cheltenham.
Pugh, Charles	Robert Hemming Parr, Poole, Dorset.
Palmon, William Thrush	Edward Hemingway, Leeds.
Ramsden, Thomas	William Pickard, Wakefield; assigned to James Whitham, Wakefield.
Rule, Frederick	Thomas Kirk, 10, Symond's Inn.
Scott, Philip	Charles Small, Bideford.
Sedgwick, Samuel Godwin	Thomas Potter, Manchester.
Shaw, Thomas	William Plant Woodcock, Bury, Lancaster.
Sherard, Edward Castel	William Lawrence, Peterborough.
Shields, Thomas	Thomas Christopher Maynard, Durham; assigned to Joseph Blower, 61, Lincoln's Inn Fields.
Silk, John Alexander	Messrs. Waugh and Fisher, 5, Great James Street.
Simmons, Charles John	John Lintorn Simmons, Keynsham.
Simpson, Thomas	David Thomas, Stafford.
Smallwood, Henry George	James Powles, Monmouth.
Smith, Joseph	Charles Ireland Sherreff, 7, Lincoln's Inn Fields; assigned to John Jackwood, Cheltenham.
Sorrell, John	Joseph Kinder, 8, London Street, Fenchurch Street.
Staple, John	James Johnston, 26, Carey Street, Lincoln's Inn.
Sudlow, John James Joseph, the younger	William Fisher, 20, Chancery Lane.
Taylor, Clement	Adam Taylor, Norwich.
Taylor, Pearson	Robert Benson, Cockermouth.
Taylor, William James	Thomas Rawathorne, Lancaster.
Told, Robert	Arthur Levitt, Kingston-upon-Hull.
Tombs, Edward Thomas	Charles Thomas Reynolds Dewe, Derby.
Trotter, Thomas Dixon Marr	Percival Fenwick, Newcastle-upon-Tyne.
Vickerman, Charles Ranken	Charles Ranken, Gray's Inn.
Vollans, John William Thompson	George Miller, Kingston-upon-Hull; John Thorney, Kingston-upon-Hull.
Welsby, William	John Welsby, Ormskirk.
Wemyss, James Robert	John Aubrey Whitcombe, Gloucester.
Whish, John Buchanan	William Wise, Rugby.
Whitfield, William	John Oxley, Rotherham.
Wilkin, Thomas Martin	Thomas Wilkin Soham, Cambridge; assigned to Thomas Pocock, 59, Bartholomew Close.
Wood, James	Greenwood Bentley, the elder, Bradford.
Woodburne, Thomas	William Dickson, Preston.

## SUPERIOR COURTS.

### *Queen's Bench.*

[Before the Four Judges.]

**PRACTICE.—EQUITABLE JURISDICTION.—  
FORFEITURE.**

*The Court will not grant summary relief to a tenant in an action of ejectment on a forfeiture for nonperformance after notice of a covenant to repair.*

This was a rule calling on the lessor of the plaintiff to shew cause why the judgment

entered for him in this case should not be set aside on payment to him of the costs of the action and of the rule, as between attorney and client. The rule had been obtained on an affidavit, which set forth that this was an action of ejectment brought to recover possession of certain premises of which the defendant had been the lessee, and which he had forfeited by nonperformance of a covenant to repair. On the 17th of March 1837, the lessor of the plaintiff caused to be served on the lessee a notice to the following effect:—  
“ I herewith send you a formal notice to repair and insure the premises you now hold, accord-



ing to your covenant. You will, of course, take heed of this notice, as I shall avail myself of any legal remedy on the fact of your not complying with this request; and I think it best to speak thus plainly, and though apparently harshly, yet in fact kindly, as it is for your interest." The defendant did not repair within the time limited, and the present action was then brought. In the mean time repairs had been done to a considerable extent, and the affidavits filed on the part of the defendant described the premises as in substance fully repaired, and the defendant therefore claimed the equitable interference of the Court to save him from the consequences of the forfeiture. The affidavits filed on the part of the plaintiff alleged that there were still some trifling repairs which had not been performed, and set forth the notice as affording to the defendant full warning that he must repair the premises, and that if he did not repair them within the limited time advantage would be taken of the covenant.

Mr. R. V. Richards and Mr. Arnold shewed cause against the rule.—This is an application of an entirely novel kind. It is an attempt to make a court of common law go further in affording equitable relief than even courts of equity have done. Something of this sort was done in the time of Lord Erskine; but the subject was discussed in the case of *Hill v. Barkley*,<sup>a</sup> and Lord Eldon there held that the court of equity had no power to grant such an application. Before the statute of 4 Geo. 2, c. 28, courts of equity would sometimes grant relief, under particular circumstances, where the forfeiture was insisted on solely upon the ground of nonpayment of rent, and that statute gave to the courts of common law a power to give relief in the same class of cases. But this Court has held that that power must be exercised according to the strict letter of the statute, and therefore in *Doe d. Harris v. Masters*,<sup>b</sup> refused to extend the required relief to any other cause of forfeiture than that of mere nonpayment of rent, and refused to give relief even in that case after trial. In *Hill v. Barkley*, the whole subject was considered by Lord Eldon, and an injunction which had previously been obtained to stay the proceedings was dissolved. Again, in *Bracebridge v. Buckley*,<sup>c</sup> and *White v. Warner*,<sup>d</sup> the Courts of Exchequer and Chancery refused to grant injunctions in cases of forfeiture for other causes than for mere nonpayment of rent. The doctrine stated in those cases was declared, in *Eden on Injunctions*,<sup>e</sup> to be that now commonly adopted by the courts of equity. The same thing was stated in *Comyns on Landlords and Tenants*.<sup>f</sup> This case had been at chambers, and the learned Judge who then considered it expressed his opinion against the application. The only case in the books that appeared to be in favour of the application

was that of *Hark v. Leonard*,<sup>g</sup> [Lord Denman, C. J.—My brother Littledale says that 9 Mod. is even worse than 10 Mod.] It is so; and Lord Eldon, in *Hill v. Barkley*, said that that case was one which a Judge could not follow without the greatest consideration, and that the note of that case was very loosely written. So that both before and since the statute courts had refused to interfere except in cases of forfeiture for nonpayment of rent.

Mr. Kelly, in support of the rule.—The defendant's affidavit shews that the repairs have been in substance performed. There is no fault found with the way in which they have been done. It is now only said that there are some trifling repairs remaining to be done. Let the plaintiff shew what these are, and they shall be done. An offer to this effect has already been made, but that offer has been refused. The circumstances of this case are very hard upon the defendant. The Court will consider the hardship of the case, and will, on account of it, exercise the jurisdiction which it possesses. The object of the statute is to enable the Court to interfere where the party about to be evicted has *bona fide* performed his covenants. That is the case here, and the plaintiff, if he now recovers possession of the premises, will not only have possession, which was meant to be the penalty for non-performance of the covenant, but also all the advantage of the performance of it, for the premises are repaired. The Court will not give him such an advantage. The equitable ground of application is therefore fully made out. In the Court of Common Pleas there is a case, which, however, has not been reported, where the Court acted on the principle that under circumstances of hardship it would interfere. Those circumstances exist in the present case, and the rule therefore ought to be made absolute.

Lord Denman, C. J.—There is no doubt that in particular cases the courts often wish to interfere, and sometimes they do interfere so far as to put things in a train in which the parties are likely to come to some arrangement. We have no doubt that that was all that the Court of Common Pleas did in the case referred to; for if the Court had done more,—if it had acted *in invitum*, the case would have been reported: that it did not do so is pretty strongly indicated by the fact that no report of the case exists. I think that we have not power to do what is required of us here; and by making this rule absolute, we should only be tempting parties to come before us and make these unsatisfactory applications, on points on which they must ultimately be defeated.

Mr. Justice Littledale.—I am entirely of the same opinion. I think that the Court has no jurisdiction in this matter. It appears from the cases cited that courts of equity have refused, except in particular circumstances, to interfere. Those circumstances do not exist in the present case. If these premises had

<sup>a</sup> 16 Ves. 402; 18 Ves. 56.

<sup>b</sup> 2 Barn. & Cres. 490. <sup>c</sup> 2 Price, 200.

<sup>d</sup> 2 Meriv. 459. <sup>e</sup> p. 26. <sup>f</sup> p. 500.

<sup>g</sup> 9 Mod. 90.

been repaired in accordance with the covenant, even within a short time after the expiration of the notice to repair, that would have been an answer to the action of ejectment; for if there is a general covenant to repair, and if there is also a particular covenant to repair within a specified time after notice, and the repairs are performed within that specified time, that would prevent the forfeiture. I think that we have not authority to interfere here. It might certainly be desirable on many occasions for the parties to make a fresh agreement, and I believe that it is generally done; for, perhaps, in half the leases of the kingdom the landlords possess rights of forfeiture which, if strictly enforced, would enable them to turn all their tenants out of possession. But where, under circumstances of this kind, the parties will not agree together, the Court has no power to compel an agreement.

Mr. Justice *Patteson*.—It is clear that the Court has not jurisdiction to make this rule absolute. On turning to my notes of the motion, I think that the impression of the Court was, that in this case there were two covenants—one general to repair, and one specially to repair within three months after notice; that the landlord had given the notice under the second covenant, and that on that second covenant the repairs had been *bond fide* completed, and that the landlord had, notwithstanding that fact, brought ejectment as for a forfeiture on the general covenant. Whether the Court could have interfered then I will not say; but it is clear that that was not the fact. We should, if we made this rule absolute, be putting ourselves in the place of a jury.

Mr. Justice *Coleridge*.—The strongest way in which this case could be put is, that on the face of the affidavits it is clear that there are circumstances stated which would be an answer to the action. But even then, this Court could not take on itself to stop the judgment upon facts brought forward on affidavits.

Rule discharged, with costs.—*Doe d. Mayhew v. Asley*, E. T. 1839. Q. B. F. J.

**PRACTICE.—SECONDARY'S NOTES.—NEW TRIAL.**

*Where a notice had been served in time at the Secondary's Office, calling on the Secondary to produce his notes of a trial which had taken place before him, and the answer given at the office was that the Secondary was out of town, and would not return till after the regular time for moving for a new trial had expired; and where the attorney was shown the notes and copied them, and examined the copy with the original, and swore to its correctness, the Court permitted the motion for the new trial to be made on such copy.*

Mr. *Montagu Chambers* appeared to move for a rule for a new trial in a case which had occurred before the Secondary. He stated that he was not able to comply with the rule,

which required that when a new trial in a case tried before the Secondary or the Sheriff was moved for, the notes of the trial should be produced, verified by affidavit. Notice had been served at the Secondary's Office in due time, but the answer returned was that the Secondary was out of town, and would not return till a day which would be subsequent to that when the right to make this motion would expire. The attorney had applied at the Secondary's Office, had seen his clerk, and read and copied his notes, and had examined the copy, and swore to his belief of the correctness of the copy. Under these circumstances he applied to the Court for leave either to make the motion on this copy, or to have the time for moving extended till after the Secondary's return.

The Court, after a short consideration, gave leave to the learned counsel to proceed with the motion.

*Ellis and wife v. Mason*, E. T. 1839. Q. B. F. J.

**Queen's Bench Practice Court.**

**SCIRE FACIAS.—AMENDMENT.—QUASHING WRIT.—COSTS.—CASETUR BREVE.**

*A plaintiff may quash his writ of sci. fa. on a judgment, without paying costs of discontinuing proceedings previously irregularly commenced on the judgment.*

In this case a judgment had been obtained by the plaintiff. A writ of *sci. fa.* was afterwards sued out, and after that an action was brought on the judgment. The defendant pleaded the pendency of the proceedings by *sci. fa.*, and the plaintiff entered a *casetur breve*. On this proceeding, no costs according to the practice were given to the defendant. He then discovered that the *sci. fa.* had issued into the county of Hertford instead of Middlesex, in which county the venue in the original action was laid. A rule *nisi* for the quashing of the writ of *sci. fa.* on payment of costs was then obtained.

*Whitehurst* shewed cause, and contended that the rule could not be made absolute as a matter of course, without any conditions. It was suggested, that the defendant ought to have the costs to which he had been put in consequence of the plaintiff suing out a writ on the judgment when he had already sued out a writ of *sci. fa.* on it. Under these circumstances, it was submitted that the payment of these costs should be made a condition precedent to quashing the writ of *scire facias*.

*Wordsworth* in support of the rule, submitted that as the plaintiff was entitled to quash his writ of *sci. fa.* as a matter of course, on payment of costs, the proceedings of another kind, or any costs of them, could not be made a condition precedent to the granting the application.

*Williams, J.*—I think I cannot make the payment of those costs the condition of granting this rule absolute.

Rule absolute.—*Oliverson v. Letour*, E. T. 1839. Q. B. P. C.

**MANDAMUS.—MAGISTRATES' DISCRETION.—STAMPS.—INFORMER.**

*If on an information preferred before a magistrate, he exercises his discretion as to dismissing it, the Court will not interfere to compel the magistrate to return the proceedings in order to review his decision.*

In this case, the British and Foreign Patent Invention Company had circulated certain printed papers, without the printer's name attached to them, contrary to the provisions of the 39 G. 3, c. 79, amended by the 51 Geo. 3, c. 65. By the provisions of those two acts it was directed, that the number of informations in respect of one paper should be limited to twenty-five. An information was laid by a common informer against the company in respect of the circulation of a particular paper, and a conviction ensued. A friend of the company then laid twenty-four other informations in respect of the same paper. The agent of the company appeared and pleaded guilty. The common informer was present at the time, and he objected that in these twenty-four cases the only witness was the person laying the information, who was incompetent according to the provisions of the acts of parliament. He also submitted that the confession by the agent of the company was insufficient to supply the defect in question. The magistrate before whom the informations were laid was of opinion that he could entertain the information so as to convict the company, and accordingly dismissed the proceedings. Since that, the informer was proceeding against the company in the twenty-four other cases.

Shee now moved for a rule nisi for a mandamus to compel the magistrate to return the friendly proceedings against the company, in order to review the decision of the magistrate.

*Williams, J.*—I cannot interfere. The cases have come on before the magistrate, and he has exercised his discretion on the subject of the complaint; and I cannot interfere with it.

Rule refused.—*Ex parte The British and Foreign Patent Invention Company*, E. T. 1839, Q. B. P. C.

**ATTACHMENT.—LIEN.—COSTS.—ATTORNEY.—CONDITION.**

*If an attorney is changed, and he gives up his client's papers to his client, without payment of costs, he cannot obtain an attachment for non-payment of them.*

In this case a person named Walley, an attorney, had been employed by the plaintiff; and afterwards an order was obtained for substituting another person for him. The order contained the usual clause that the papers in the possession of the attorney should be delivered up to the client on payment of costs. The papers were delivered up, but the costs were not paid.

Best now moved for a rule to shew cause why a writ of attachment should not issue against the client for non-payment of costs, pursuant to the implied undertaking contained

in the judge's order for the delivery up of the papers on payment of costs.

*Williams, J.*—The attorney had a remedy in his own hands for securing the payment of his costs, by retaining the papers in his hands until they were paid. He has thought proper to part with that security, and I cannot now relieve him, by an attachment, from the consequences of his own conduct.

Rule refused.—*Hendy v. Collett*, E. T. 1839, Q. B. P. C.

**ARBITRATION.—AWARD.—STRANGER.—ATTACHMENT.—EXCESS OF AUTHORITY.**

*An attachment for non-payment of money pursuant to an award, cannot be obtained by a person not a party to the reference, although the money is to be paid to him by the terms of the award.*

In this case an agreement of reference was made between a person named Skeet and three other persons, the object of which was to settle certain differences which had arisen between them as part-owners of a certain vessel, in which the parties to the reference were interested. The arbitrator awarded that one of the parties (Skeet) should pay a sum of 16*l.* 17*s.* 5*d.* to a person named Hall, for goods supplied by him to the vessel. At the instance of this person, a rule to shew cause why a writ of attachment for non-payment of this sum should not issue against Skeet, was applied for by *Martin*, and obtained.

*Turner* shewed cause against this rule, and contended that the present case was not one in which an attachment could go. First, it was clear that on the face of the award the arbitrator had exceeded his authority, in directing a party to the reference to pay money to a person not a party to it. Secondly, it was an application at the instance of a person who was a stranger to the reference. Even if the former could not be considered as a valid objection, the latter must clearly prevail. Nothing was clearer than that a person not a party to an award could not obtain an attachment for its non-performance.

*Martin* supported the rule, and contended that as the claim of Hall was a matter specifically arising out of the supplies of the vessel forming the subject-matter of the arbitration, it was a matter within the jurisdiction of the arbitration. Being so, the person interested in the matter decided must be entitled to enforce it by the process usually applied by the Court to enforce awards.

*Cur. adv. vult.*

*Williams, J.*—I think that the attachment cannot be granted at the instance of a person who is not a party to the reference, though I strongly am of opinion that the arbitrator has not exceeded his authority.

Rule discharged.—*Re Arbitration of Skeete and others*, E. T. 1839, Q. B. P. C.

ADMISSION OF ATTORNEY.—ALTERATION OF NAME.—AMENDMENT.

*Where a mistake has been made in the christian name of an attorney applying for admission, in his notice for admission, the Court will allow the name to be amended.*

This was an application by John Bayley, on behalf of a gentleman named Henry Clifton Dukes, to amend his notice for admission. By mistake, the London agent had put the name of "Charles" instead of "Clifton." The object of the present application was to amend the notice by substituting the former for the latter name. No injury could result from the amendment being made, and no deception was intended by the party applying.

*Williams, J.*—The amendment may be made, as required.

Application granted.—*Ex parte Dukes, E. T. 1839. Q. B. P. C.*

Common Pleas.

SERVICE IN EJECTMENT.

*Service in ejectment having been effected on the son of the tenant on the premises, and the attorney of the tenant having afterwards expressed his intention to enter an appearance, the Court granted a rule nisi for judgment against the casual ejector.*

*Busby* moved for a rule nisi for judgment against the casual ejector. Service had been effected upon the son of the tenant, and proper explanation made to him, and he stated that his father was on the adjoining premises. An attorney had since called upon the attorney of the lessor of the plaintiff to endeavour to make some arrangement, but the latter saying that it would be useless to attempt to do so, the attorney of the tenant asked whether the tenant should appear. The other answered that he had better, and they separated, understanding that an appearance would be entered.

*Tindal, C. J.*—You may take a rule to shew cause.

Rule nisi accordingly.—*Doe d. Smith v. Roe, E. T. 1839. C. P.*

SITTINGS OF THE COURTS.

Equity Chychequer.

Mr. Baron Alderson.

Saturday .. May 11 { Petitions, Motions and Further Directions.

Lord Abinger.

Monday .. 13 }  
Tuesday .. 14 } *Cooper v. Byron*  
Thursday .. 16 } *Same v. Hewson.*

Chychequer of Pleas.

MIDDLESEX.

Saturday .. May 11 }  
Monday .. 13 } Common Juries.

LONDON.

Tuesday .. 14 Adjournment day, C. J.  
Wednesday .. 15 Common Juries.

The Court will sit at Half-past Nine o'clock.

Common Pleas.

Trinity Term.

MIDDLESEX.

LONDON.

Wednesday .. May 29 | Friday .. May 31  
Wednesday .. June 5 | Friday .. June 7

After Term.

Thursday .. June 13 | Friday .. June 14

The Court will sit at Ten o'clock in the Forenoon on each of the days in Term, and at Half-past Nine precisely on each of the days after Term.

The Causes in the List for each of the above Sitting Days in Term, if not disposed of on those days, will be tried by Adjournment on the days following each of such Sitting Days.

On Friday the 14th of June, in London, no Causes will be tried, but the Court will adjourn to a future day.

THE

TRINITY TERM EXAMINATION.

THE Examiners have appointed *Wednesday*, the 5th *June*, to proceed on the Examination of the Candidates of Trinity Term, and their testimonials of due service must be left on or before *Tuesday*, the 28th *instant*.

The Examiners will be Sir Fortunatus Dwarria, (one of the Masters of the Court of Queen's Bench,) with Mr. Amory, Mr. Clayton, Mr. Foss, and Mr. Martineau.

NORTHERN CIRCUIT.

*H. R. Reynolds, Esq.* Chief Commissioner.

*Rutlandshire*, at Oakham, *Wednesday*, June 26.

*Yorkshire*, at Sheffield, *Friday*, June 28.

*Yorkshire*, at Wakefield, *Monday*, July 1.

*At the Town of Kingston-upon-Hull*, *Friday*, July 5.

*Yorkshire*, at York and City, *Monday*, July 8.

*Yorkshire*, at Richmond, *Wednesday*, July 10.

*Lancashire*, at Liverpool, *Saturday*, July 13.

*Cheshire*, at Chester and City, *Wednesday*, July 17.

*Flintshire*, at Mold, *Friday*, July 19.

*Denbighshire*, at Ruthin, *Saturday*, July 20.

*Anglesey*, at Beaumaris, *Tuesday*, July 23.

*Carnarvonshire*, at Carnarvon, *Wednesday*, July 24.

*Merionethshire*, at Dolgelly, *Friday*, July 26.

*Montgomeryshire*, at Welchpool, *Monday*, July 29.

*Lancashire*, at Preston, *Wednesday*, July 31.

*Lancashire*, at Lancaster, *Thursday*, Aug. 1.

*Westmorland*, at Kendal, *Thursday*, Aug. 8.

*Westmorland*, at Appleby, *Friday*, Aug. 9.

*Cumberland*, at Carlisle, *Saturday*, Aug. 10.

*Northumberland*, at Newcastle-upon-Tyne and Town, *Tuesday*, Aug. 13.

*Durham*, at Durham, *Thursday*, Aug. 15.

## HOME CIRCUIT.

J. G. Harris, Esq., Commissioner.

*Sussex*, at Lewes, Friday, June 28.  
*At the City of Canterbury*, Saturday, July 13.  
*Kent*, at Dover, Monday, July 15.  
*Kent*, at Maidstone, Wednesday, July 17.  
*Hertfordshire*, at Hertford, Friday, July 26.

## SOUTHERN CIRCUIT.

T. B. Bowen, Esq., Commissioner.

*Berkshire*, at Reading, Monday, June 24.  
*Oxfordshire*, at Oxford, Wednesday, June 26.  
*Worcestershire*, at Worcester and City, Friday, June 28.  
*Radnorshire*, at Presteigne, Monday, July 1.  
*Herefordshire*, at Hereford, Tuesday, July 2.  
*Brecknockshire*, at Brecon, Thursday, July 4.  
*Carmarthenshire*, at Carmarthen and Borough, Friday, July 5.  
*Cardiganshire*, at Cardigan, Monday, July 8.  
*Pembrokeshire*, at Haverfordwest and Town, Wednesday, July 10.  
*Glumorganshire*, at Swansea, Friday, July 12.  
*Glumorganshire*, at Cardiff, Saturday, July 13.  
*Munmouthshire*, at Monmouth, Monday, July 15.  
*Gloucestershire*, at Gloucester and City, Wednesday, July 17.  
*At the City of Bristol*, Saturday, July 20.  
*Somersetshire*, at Bath, Wednesday, July 24.  
*Somersetshire*, at Wells, Friday, July 26.  
*Devonshire*, at Exeter and City, Monday, July 29.  
*Devonshire*, at Plymouth, Thursday, Aug. 1.  
*Cornwall*, at Bodmin, Friday, Aug. 2.  
*Dorsetshire*, at Dorchester, Monday, Aug. 5.  
*Wiltshire*, at Salisbury, Wednesday, Aug. 7.  
*Hampshire*, at Winchester, Friday, Aug. 9.  
*At the Town of Southampton*, Monday, Aug. 12.

## MIDLAND CIRCUIT.

W. J. Law, Esq., Commissioner.

*Essex*, at Chelmsford, Monday, July 22.  
*Essex*, at Colchester, Tuesday, July 23.  
*Suffolk*, at Ipswich, Wednesday, July 24.  
*Norfolk*, at Yarmouth, Thursday, July 25.  
*Norfolk*, at Norwich and City, Friday, July 26.  
*Norfolk*, at Lynn, Monday, July 29.  
*Suffolk*, at Bury St. Edmunds, Tuesday, July 30.  
*Cambridgeshire*, at Cambridge, Wednesday, July 31.  
*Huntingdonshire*, at Huntingdon, Thursday, Aug. 1.  
*Northamptonshire*, at Peterborough, Thursday, Aug. 1.  
*Lincolnshire*, at Lincoln and City, Saturday, Aug. 3.  
*Nottinghamshire*, at Nottingham and Town, Monday, Aug. 5.  
*Derbyshire*, at Derby, Tuesday, Aug. 6.  
*Leicestershire*, at Leicester, Wednesday, Aug. 7.  
*At the City of Lichfield*, Thursday, Aug. 8.  
*Staffordshire*, at Stafford, Friday, Aug. 9.  
*Shropshire*, at Shrewsbury, Monday, Aug. 12.  
*Shropshire*, at Oldbury, Tuesday, Aug. 13.  
*Warwickshire*, at Birmingham, Wednesday, Aug. 14.  
*At the City of Coventry*, Thursday, Aug. 15.

*Warwickshire*, at Warwick, Friday, Aug. 16.  
*Northamptonshire*, at Northampton, Monday, Aug. 19.  
*Bedfordshire*, at Bedford, Tuesday, Aug. 20.  
*Buckinghamshire*, at Aylesbury, Wednesday, Aug. 21.

## THE EDITOR'S LETTER BOX.

If a Correspondent of the Middle Temple will read the advertisement which follows the title-page of "The English Bar," he will find that it professes only to be a publication of 1835, with the names of gentlemen since called to the Bar. He cannot then be misled as to the Judges and Benchers recently promoted. The Table of Precedence of the Bar, given at pp. 75, 76, was re-printed for the last edition, and the exact dates of the calls to the Bar need no alteration. The information as to the Inns of Court, was taken from the Commissioners' Report.

The report which has been sent us relating to a case of survivorship or accruer, does not contain a sufficient extract from the will.

The letters of "Candidatus;" J.C.; "Civis" and P. W. shall be attended to.

A correspondent states, that from several decisions of the Courts of Law and Equity, an attorney or solicitor is not bound to be re-admitted, if he neglect to take out his certificate for one year after admission or re-admission, provided he has not practised; and he says the masters of the Queen's Bench refuse to enter the rule for re-admission without the certificate; and they will not enter either after the expiration of a year from the re-admission.—We think our correspondent is mistaken as to the decisions affecting re-admissions, where the party has been admitted and practised, and then ceased to take out his certificate. The case in which no re-admission is deemed necessary, is where the party, though admitted, has never practised or taken out a certificate.

We thank a correspondent for informing us of the judgment of the Court of Review, under the statute 3 & 4 W. 4, c. 98, on a case in which an advance was made on a promissory note for three months, to be renewable during a period of not more than eighteen months, and on payment of interest at ten and a half per cent., which was supposed to be sheltered under the 7th section of that act, allowing unrestricted interest on bills payable within three months. The Court, it appears, was of opinion that it was usurious.—*Ex parte Terrevent, in re Poynter*, a bankrupt, 27th April, 1839.

•• Since our last List of *Law Bills in Parliament*, Sir E. Sugden's bill for the Protection of Purchasers, and the Durham Court Bill, have passed the Commons, and have been read a first time in the House of Lords.

# The Legal Observer.

SATURDAY, MAY 18, 1839.

— "Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## THE CONSOLIDATION OF THE COMMON LAW.

WE have, in the discharge of our professional duty, just concluded a search which we trust may be profitable to our clients. In investigating a point of some difficulty, which arose in practice, we have been obliged to open at least one hundred volumes. Our first clue was the name of a leading case on the subject, on which we wished to satisfy ourselves, which case, fortunately, we remembered. This case furnished us with references to no less than twenty others, and we then pursued our search with vigour. From octavo to folio, from report to abridgement, from abridgement to digest, from digest to treatise,—on we went, hour after hour. Once, indeed, we thought we had caught the true rule, as laid down by one learned judge, but before we had finished the page, we found ourselves lost in further references, with new qualifications. We turned to these but to discover other diverging paths presented to us. We still, however, pursued our way: amidst clouds of dust, we dived into the forgotten lore of black-letter, and spelt over page after page of a hotchpot of languages. In the old reporters we found conclusions without premises; in the new, premises without conclusions. The ancient judges laying down rules without number; the modern judges carefully abstaining from laying down any rule at all. At last, bewildered by all we had read, and hardly able to look over the pile of books we had accumulated, we found that the result of all our labour came to this,—that our precise case had never occurred before—that there was no general rule on which we could

decide it, which had been recognized by the general stream of decisions, and that we must make up our minds to determine it on a common sense application of our first view of the law.

Now we humbly think that there is and should be some remedy for this evil. We do not mean to say that the complete body of the law is to be compressed into one volume. We are not of the 'waistcoat pocket' school: condense as you will, we do not believe that the whole doctrine of estates is to be contained in a nutshell; but we do think that some sort of *rest* in the great account of past, present, and future law, may advantageously be made at the present time. We do think that a digest of the law, committed to careful and competent hands, might be compiled, which would do much to remedy many of the evils from which we have just been suffering, and to which all are exposed in the present state of the law in this country. We know it may be said that you cannot remedy the evil,—that it is necessarily incident to a great state, where the relations of property and the rights of persons become confused and entangled;—that you cannot banish from your law libraries the countless array of reporters—that you cannot restrain their citation—and that if you did drain them off into a Digest, you would soon be swamped by them again. Now all this we must beg to dispute, if laid down to the full extent. We admit that we can conceive of no law which can prevent a reference, if parties please it, to the materials of which the Digest should be formed; and in certain cases we think resort would be had to them, more especially at first. But we are quite sure that a great deal might be done in rendering the law more certain, and easy of

attainment; and we cannot conceive, as practical men, that we are to abstain from effecting what would be, perhaps, the greatest benefit ever bestowed upon this nation because it will not apply to every case.

We have shown on previous occasions, that the consolidation of the common law has been recommended by the sages of the law from the time of Elizabeth down to the time of Victoria; we believe it to be a practical measure, which would be of equal benefit to the profession as to the public: and we will not cease calling attention to it until the subject shall receive that attention which it so richly deserves.

### THE MINISTRY.

At the time that we went to press last week the ministry of Lord Melbourne had resigned, and Sir Robert Peel had received commands to form a ministry. All that is positively known of the legal arrangements which were made by that gentleman is, that Lord Lyndhurst was Chancellor. It is well known to our readers, that Sir Robert Peel shortly after resigned the trust committed to him, and the former ministry resumed their places. We shall advert to the completion of the arrangement in our next number.

### PRACTICAL POINTS OF GENERAL INTEREST.

#### TAXATION OF COSTS.

We shall this week present to our readers two points, perhaps of greater professional than general interest. The first is at common law, and relates to the number of briefs allowed to a plaintiff. In *Morris v. Hunt*, 1 Chitt. 550, *Bayley, J.* says "with respect to the number of counsel, it appears that the Master has allowed three; and it seems to me that the Master ought in these cases to exercise a discretion, which discretion must be regulated to a certain degree by the nature and magnitude of the cause, and the number of witnesses which are likely to be examined. Considering the nature of this case, I can by no means say that the allowance for three counsel on the taxation of costs was too much." In the following case, it will be seen that a defendant was allowed two, though there were no witnesses examined by him.

This was an action to recover 1000*l.*, alleged by the plaintiff to have been lent by him to the defendant on an I. O. U. through the agency of one *Hale*. A verdict having been found for the defendant, the plaintiff obtained a rule for a new trial on payment of costs. In taxing the defendant's costs, the Master, on the ground that the defendant had proposed to call no witnesses, allowed for only one counsel, notwithstanding the defendant had employed two,—and disallowed a charge for consultations, and for the attendance in London of the defendant's attorney from the country. *Talfourd, Serjeant*, obtained a rule nisi for a review of the taxation, upon an affidavit which alleged that the cause was of importance, affecting the character and credit of the parties, and the authority of *Hale*, and involving a question of law, that though there were no witnesses on the side of the defendant, his brief contained the examinations of the plaintiff and *Hale* under a fiat of bankruptcy, which examinations, in one event, it would have been necessary to give in evidence, and that the defendant's success depended on the careful cross-examination of the plaintiff's witness; that the cause of action arose in Bath, and that the presence of the country attorney was essential to the safe-conduct of the defendant's case. *Wilde, Serjeant*, and *Ogle*, who shewed cause, contended that the matters sought to be reviewed were entirely for the discretion of the Master, with the exercise of which the Court would not interfere. *Talfourd*.—The Master has acted on a wrong principle in refusing to allow for two counsel, where so much depended on the cross-examination of the plaintiff's witness; in disallowing consultations upon the subject of offering the examinations in evidence for the defendant, and in disallowing the expenses of the country attorney, who, as the most cognizant of the circumstances of the case, ought to be present to conduct the defence. The Court directed that the Master should reconsider the matter. Rule absolute.—*Madison v. Bacon*, 5 Bing. N. C. 246.

The other was a case at Equity, and related to—

#### THE APPOINTMENT OF A NEW TRUSTEE.

Where a power is omitted in a deed or will to appoint trustees, some diversity exists in the practice as to whether on a reference to the Master to appoint new trustees, the Court will direct the insertion of a power to such trustees to appoint new trustees as occasion shall require. In *Bay-*

*ley v. Mansell*, 4 Madd. 226, Sir John Leach, V. C., refused to grant the insertion of such a clause, and he subsequently at the Rolls adhered to this determination. *Southwell v. Ward*, Taml. 1829. However, Sir A. Hart, I. L. C., on a bill for the appointment of a new trustee, directed a proviso to be inserted in the deed, authorizing the parties from time to time thereafter to appoint new trustees, although this was not prayed. *Joyce v. Joyce*, 2 Molloy, 276. But on the latest case on the point, the rule laid down by the former learned Judge was adhered to.

The suit was instituted for the appointment of new trustees. Counsel for the plaintiff suggested that the Court might order the insertion of a clause in the will, authorizing the new trustees to appoint others in their room. He said that this had been done in a case which had lately occurred in the Rolls Court, but he admitted that *Bayley v. Mansell*, 4 Madd. 226, was against the application. *Alderson*, B.—I think there is no foundation in principle for such an application: though, if there were any reported authority in its favour, I might consider myself bound by it." Application refused. *Brown v. Brown*, 3 Y. & Col. 396.

*Joyce v. Joyce* does not appear to have been cited. It is to be observed that such a direction has been made in the case of charities. *Attorney General v. Hurst*, M. R. 1791, cited in Lewin on Trustees, p. 602, and see the decree stated in Seton's Decrees, 130. Perhaps the point is still open for discussion.

## NOTICES OF NEW BOOKS.

*Codes Legum Anglicanarum: or a Digest of Principles of English Law; arranged in the order of the Code Napoleon.* By Geo. Blaxland. London: Henry Butterworth, 1839.

MR. BLAXLAND'S object in this work has been to collect as many rules of English law as there are articles of the French Code bearing on similar points, and arranged in the same order. We are accustomed to hear the brevity of the French Code highly praised; and when we compare it with our English Statute Law, we must candidly acknowledge its superiority in form, language and arrangement, if not in substance and detail. Mr. Blaxland well points out the advantage which the English lawyer possesses in the decisions

of our Courts, which provide not only a rule of law, but also shew the process and the principles from which the rule was obtained, and thus furnish examples for deciding future cases.

"The non-professional reader," he says, "will, however, be more readily convinced of the inefficacy of the French codes to meet the wants of society, when he is told by so eminent a French lawyer as M. Dupin, in his advice to a student whom he would not willingly overburthen, that, in order first to thoroughly understand what the codes themselves do contain, he must apply not only to the codes, but also to the projects originally prepared of them; the observations made by the various French courts of law on those projects; the discussions which took place in the council and chambers; and the reports and exposés of motions on enacting those projects; all of which are collected in no less than fifteen closely printed octavo volumes. And when he is informed that, to what was originally contained in these codes, numerous additions have been made, to be separately found in upwards of one hundred volumes of bulletins des lois, he may be inclined to think that there must at least, in this mass of legislation, be sufficient for a nation's utmost wants. But such is not the case; and French law writers are found referring, not to the codes, but to the old systems of the Roman, and the customary law previously existing in France, to supply the deficiencies of positive legislation, and to explain the meaning of the codes. Hence, though we find in the one volume of the Code Civil, one of eight codes, expounded in nineteen octavo volumes, by persons of such undoubted learning as M. Duranton, and numerous commentaries on that and the other codes, by M. Delvincourt and other able men, yet even these have not sufficed to prevent the demand for a publication of a general collection in thirty volumes, of the French laws as they existed before the revolution. Collections of decisions, which multiply by dozens of volumes annually, and numerous other works, besides the whole body of the civil law, might be added to fill up the library required now in France to supply materials for law, under the deficiencies of the codes to meet the exigencies of society."

Mr. Blaxland's work consists of an historical introduction, containing an examination into the original sources of the laws of France and England. The 1st book treats of Persons, the 2d of Property, and the 3d of the Modes of acquiring Property. The principal subjects comprised under these leading divisions are the following:—1. The enjoyment and privation of civil rights; evidences of the civil condition of persons; domicile; marriage; divorce; paternity; adoption; paternal power; minority; guardianship; lunatics and unthrifths.—2. Distinctions of property; right of pro-



perty; estates in fee and for life; uses and trusts; incorporeal hereditaments. 3. Descent of property, and its distribution; gifts or donations; wills; perpetuities; contracts; evidence; &c.

The author has quoted his authorities, whether in the application of principles in legal decisions, or in the statutory enactments. Aware, he says, of the difficulty of forming correct legal *Definitions*, he has sought carefully for those given by the masters of the law, and has not ventured to alter them, though defective or redundant. In stating the *rules* of law, he has taken pains to shew the legal maxims bearing thereon, believing that in those maxims, so often borrowed from the civil law, are contained the fundamental principles of English law.

As an example of the work, we may select the following, relating to the *consideration* or cause of a *contract*.

"In every contract there must be a lawful and valuable cause or consideration, a *quid pro quo*. It is not, however, essential to the validity of a contract or deed under seal, to show a consideration or reciprocal benefit: but a legal consideration is absolutely necessary to a contract not under seal; and unless by deed under seal, evidence of a consideration of some sort is so absolutely necessary to the forming of a contract, that an agreement to do or pay anything on one side without any compensation on the other, is totally void in law, and a man cannot be compelled to perform it. But in general no evidence of consideration is necessary to the validity of a deed or contract under seal, unless it be in fraud of creditors; and if the consideration mentioned in a deed turn out afterwards to be void, yet the deed is good.

"As to the nature of the consideration, an action will not lie for a mere non-feasance, unless the promise is founded upon a consideration. The consideration may be a benefit to the party promising, or a benefit to a stranger, or loss, damage, or inconvenience to the party promised at the request of the party promising: but it must be of some value in law; therefore the performance of an act which the party was by law bound to perform, is not a sufficient consideration; nor natural affection, though sufficient to raise an use. Moral obligation, it should seem, is sufficient for an express promise; but it has been held not to raise an implied promise. The consideration on which a promise is founded, must move from the party by whom it is to be enforced. A consideration past or executed, will not support a subsequent promise, unless the act was done at the request of the party promising. Debts barred by statute of limitations, bankruptcy, or infancy, are sufficient to support a subsequent promise to pay.

"It is not in general necessary, though advisable, that the consideration should be ex-

pressed in the contract, except in the case of guarantees for third persons.

"As has already been stated, contracts which are opposed to the national policy and institutions, or which are founded in moral turpitude, or are inconsistent with good order and the interests of society, cannot be enforced; and this whether the consideration or effect be so."

To the doctrines here stated are added numerous notes in support of them, and we now turn to the corresponding passages in the French Code.

"1131.—An obligation without a cause, or upon a false cause, or upon an unlawful cause, can have no effect.

"1132.—The agreement is not less valid although the cause be not expressed therein.

"1133.—The cause is unlawful when it is prohibited by the law, when it is contrary to good morals or to public order."

We select another example taken from the head of *evidence*, regarding the examination of the parties:

"At common law, *accusare nemo se debet, nisi coram Deo*. An oath is not lawful whereby any person may be compelled to confess or accuse himself: and a person may not swear for himself, except where he has some particular power by act of parliament.

In chancery the defendant is put upon his oath in answer to the plaintiff's bill of complaint; but he has no means of compelling the plaintiff to answer on his oath, except by a cross or other bill filed against him.

"An answer in chancery is good evidence against the defendant as an admission upon oath, and it must all be taken together.

"The answer of a guardian is no evidence against an infant, nor the answer of a trustee against a cestui que trust.

"An answer is evidence against privies.

"The answer of one defendant is not evidence against a co-defendant; but of partners it may be."

In the Code we find the following parallel passages:

"1357.—The judicial oath is of two species: 1st. That which one party takes (*defere*) of the other in order to make the judgment of the cause depend thereon: it is called "*decisory*." 2nd. That which is taken by the direction of the judge to either of the parties.

"1358.—The oath *decisory* may be tendered in any description of dispute whatsoever.

"1359.—It can only be taken touching a fact personal to the party to whom it is put.

"1360.—It may be taken in every stage of a cause, and although there exist no commencement of proof of the demand or of the objection on which it is claimed.

"1361.—The party to whom the oath is tendered, who refuses it or who does not consent to tender it in return to his adversary, or the adversary to whom it has been tendered in return, and who refuses it, must yield in his claim or in his objection.

"1362.—The oath cannot be tendered in

return when the fact which is the object thereof does not lie between the two parties, but is purely personal to him to whom the oath was originally tendered.

"1363.—When the oath tendered or offered in return has been taken, the adversary is not admissible to prove the falsity thereof.

"1364.—The party who has tendered the oath or offered it in return, is not allowed to retract after the adversary has declared that he is ready to make such oath.

"1365.—The oath when taken only affords proof in favour of the party taking it, or against him and in favour of his heirs and assigns, or against them. Nevertheless, the oath tendered by one of the creditors in solido to the debtor, only discharges the latter as regards the share of such creditor; the oath tendered to the principal debtor discharges equally his sureties; the same tendered to one of the debtors in solido benefits his co-debtors; and the same tendered to a surety benefits the principal debtor. In the two latter cases, the oath of debtor in solido or of the surety does not benefit the other co-debtors or the principal debtor, except when it has been tendered touching the debt, and not in respect of the fact of the solidarity or security.

"1366.—The judge may take the oath of one of the parties, either to make the decision of the cause depend thereon, or simply in order to determine the amount of the sentence.

"1367.—The judge cannot administer the oath officially, either upon the demand, or on the objection which is opposed thereto, except under the two following conditions: it is necessary, 1st, That the demand or the objection should not be fully proved; 2nd, that it be not totally destitute of proofs. Except in these two cases, the judge must either admit or reject the demand absolutely and unconditionally.

"1368.—The oath administered officially by the judge to one of the parties cannot be offered in return by such party to the other.

"1369.—The oath touching the value of the thing demanded cannot be administered by the judge to the demandant, except where it is impossible by other means to verify such value. The judge must, even in this case, determine the sum up to the amount of which the demandant shall be believed upon his oath."

We regret that Mr. Blaxland has been prevented by other engagements from proceeding further in his plan. His labors, so far as they have gone, form a valuable contribution to professional literature. His work will be useful to those who are engaged in re-modelling our own system of jurisprudence, and a comparison of the English and French rules of law, bearing on the mutual intercourse of both nations, cannot fail to be generally interesting.

To the other merits of Mr. Blaxland might be added that of originality of design. There is, however, "nothing new;" for in

1630, John Cowell, D. C. L. Cantab., published a small work, in which he condensed the English Law, after the manner of the Civil Law. His book is called *Institutiones Juris Anglicani*; but it does not appear that Mr. Blaxland was acquainted with his precursor. The present Author is a Solicitor, who had intended going to the bar, but has resumed his practice in the former branch of the profession.

## NEW BILLS IN PARLIAMENT.

### SUPPRESSION OF SEDITIONARY SOCIETIES.

This is a bill to amend the 39 G. 3, c. 79, "for the more effectual suppression of societies established for seditious and treasonable purposes, and for preventing treasonable and seditious practices." The following are the proposed enactments:

1. That so much of the act 39 G. 3, c. 79, (sec. 27,) as enacts that every person, who after the expiration of forty days after the passing of the said act, shall print any paper or book whatsoever, which shall be meant or intended to be published or dispersed, whether the same shall be sold or given away, shall print upon the front of every such paper, if the same shall be printed on one side only, and upon the first and last leaves of every paper or book which shall consist of more than one leaf, in legible characters, his or her name, and the name of the city, town, parish or place, and also the name (if any) of the square, street, lane, court or place in which his or her dwelling house or usual place of abode shall be; and that every person who shall so omit to print his name and place of abode on every such paper or book printed by him, and also every person who shall publish or disperse, or assist in publishing or dispersing, either gratis or for money, any printed paper or book which shall have been printed after the expiration of forty days from the passing of the said act, and on which the name and place of abode of the person printing the same shall not be printed as aforesaid, shall for every copy of such paper so published or dispersed by him, forfeit and pay the sum of twenty pounds, shall be repealed.

2. That every person who after the passing of this act shall print any paper or book whatsoever, which shall be meant to be published or dispersed, whether gratuitously or by way of sale, and who shall not print upon the front of every such paper, if the same shall be printed on one side only, or upon the first or last leaf of every paper or book which shall consist of more than one leaf, in legible characters his or her name and usual place of abode or business, shall for every copy of such paper so printed by him or her forfeit a sum of not more than five pounds: provided always, that nothing herein contained shall be construed to impose any penalty upon any person for printing any paper excepted out of the operation of the said act, either in the said act, or by any act made for the amendment thereof.

3. That in case of books or papers printed at the University Press of Oxford, or the University Press of Cambridge, the printer, instead of printing his name thereon, shall print the following words; "Printed at the University Press," together with the word "Oxford" or "Cambridge," as the case may be.

4. That it shall not be lawful for any person or persons whatsoever to commence, prosecute, enter, or file or cause or procure to be commenced, prosecuted entered or filed, any action, bill, plaint or information, in any of her majesty's courts, or before any justice or justices of the peace, against any person or persons for the recovery of any fine, penalty or forfeiture made or incurred, or which may hereafter be incurred, under the provisions of this act, unless the same be commenced, prosecuted, entered or filed in the name of her Majesty's Attorney-General or Solicitor-General in that part of Great Britain called England, or her Majesty's Advocate for Scotland (as the case may be respectively); and if any action, bill, plaint or information shall be commenced, prosecuted, entered or filed in the name of names of any other person or persons than is or are in that behalf before mentioned, the same and every proceeding thereupon had are hereby declared and the same shall be null and void to all intents and purposes.

5. That immediately after the passing of this act it shall be lawful for any person against whom any original writ, suit, action, bill, plaint or information shall have been sued out, commenced or prosecuted, on or before the day of the passing of this act, for the recovery of any pecuniary penalty or penalties incurred under the said recited act, to apply to the court in which such original writ, suit, action, bill, plaint or information shall have been sued out, commenced or prosecuted, if such court shall be sitting, or if such court shall not be sitting, to any judge of either of the superior courts at Westminster, or to any justice of the peace before whom any such plaint or information shall be pending, or any conviction shall have been had or obtained, for an order that such writ, suit, action, bill, plaint or information shall be discontinued, or such conviction be quashed, upon payment of the costs thereof out of pocket, incurred to the time of such application being made, such costs to be taxed according to the practice of such court, or in case of any proceeding before a justice, to be taxed and ascertained by such justice; and every such court or judge, or justice of the peace, as the case may be, is hereby authorized and required, upon such application, and proof that sufficient notice has been given to the plaintiff or informer, or to his attorney, of the application to make such order as aforesaid; and upon the making such order and payment or tender of such costs as aforesaid, such writ, suit, action, bill, plaint or information shall be forthwith discontinued, or such conviction shall be quashed, as the case may be: Provided always, that in all cases in which any such writ, suit, action, bill, plaint or information shall have been sued out or commenced subsequent-

ly to the sixteenth day of April, one thousand eight hundred and thirty-nine, it shall be lawful for such court, judge, or justice as aforesaid to make such order for discontinuing the same or quashing any conviction had thereon, without payment of any costs; and in every such case, on the making of such order, such writ, suit, action, bill, plaint or information shall be forthwith discontinued, or such conviction shall be forthwith quashed, as the case may be: Provided always, that nothing herein contained shall be deemed or taken to enable any person to recover back any money paid before the passing of this act, in pursuance of any judgment or conviction duly obtained under the provisions of the said recited act.

6. That the said act, and all acts made for the amendment thereof, except so far as herein repealed or altered, shall be construed as one act together with this act.

#### FORM OF ARTICLES OF CLERKSHIP.

##### MUTUAL COVENANTS TO ASSIGN ON NOTICE.

Mr. Editor.

As I cannot find in the statutes or reports, anything to restrain or regulate mutual covenants to assign in articles of clerkship, I venture to request the favor of the opinion of your readers upon this subject.

I have read the 1st chap. of the 2nd vol. of Chitty's General Practice, and several other books upon this head, and read the different statutes there referred to. By stat. 2 Geo. 2, c. 23, ss. 5 & 7, (made perpetual by 30 Geo. 2, c. 19), no person can be admitted to practise "unless he has been bound by contract in writing, to serve as a clerk for and during the space of five years to an attorney or solicitor." Mr. Chitty states (p. 8), that the statutes are silent as to the terms and covenants in the articles, except in the requisites of the service in the professional department during the term of five years. He observes, that in the contract many events ought to be more cautiously provided for; but does not mention any licence for stipulations that the master shall assign the clerk, at the requisition of the clerk, but merely speaks as to assignments in the event of the death of the master, or his discontinuing practice.

The first above-mentioned statute renders it essential that "such person for and during the said term of five years shall have continued in such service. 22 Geo. 2, c. 46, s. 9, provides for the death of the master, or his leaving off practice, before the end of the term, and also for cancelling the contract by mutual consent; and for the clerk's being legally discharged by rule of Court before the end of the term. And in either of these cases, it is provided that another contract, on wishing to serve for the residue of the term, may be made, and that service under such fresh articles shall suffice. The 34 Geo. 3, c. 14, s. 8, more extensively provides for the determination of the articles by any other event.

The above is all I can find bearing immediately upon the subject of the form of articles. My object is to ascertain whether there is any objection in law, as being an *insufficient binding* for the space of five years, to the articles containing (after the common covenants between the master and clerk) *mutual covenants* between the master and clerk, that the master shall assign the clerk to some other attorney to be named by the clerk, for the remainder then unexpired of the term of five years, at any time during such term, on either of the parties giving to the other three calendar months' notice in writing of the wish or intention to assign or procure such assignment? And in case of an assignment being made of the clerk either at his own or the master's request under such covenants, can any legal objection be made at the end of the five years' service to admit the clerk? If the above form of articles can be objected to, in case the clerk serves out five years under such articles, can any objection be then made? It seems to me that mutual covenants to assign on notice, provide for every event when an assignment may be desirable, much more effectually than any single provision as to the master's leaving off practice, &c.;—and that the only inconvenience and objection are in the breast of the master or the clerk.

#### AN ARTICLED CLERK.

### GRIEVANCES OF THE PROFESSION.

#### PRE-AUDIENCE OF QUEEN'S COUNSEL ON MOTIONS.

*To the Editor of the Legal Observer.*

Sir,

HAVING attended the Vice Chancellor's Court on three succeeding motion-days, and experienced the repeated mortification of seeing my motion postponed to others (un-thought of at the time my notice of motion was given) in consequence of the right of precedence of certain counsel; it has occurred to me, albeit not wholly unacquainted with the refinements of *practical jurisprudence*, that the arrangement from which my disappointment has resulted savours of something rather at variance with the perfection of either reason or justice.

It appears to me that if the Court were designed as a mere dispensatory of rewards for talent, and the relief of suitors was merely a subordinate or incidental object, the present arrangement would be remarkably judicious; but inasmuch as relief to suitors is the end, and counsel are only *part of the means*, I cannot help fancying that the system might be advantageously modified.

Who can deny that it is a flagrant injustice to a suitor to have his cause indefinitely delayed merely because two or three "monster" counsel, being entitled to precedence, exclude their brethren, who are less distinguished by experience or talent, from transacting the business confided to their advocacy? And yet I reiterate the fact, that for three succeeding

motion-days no opposed motions have been made, except those in which one or other of the "leviathans" have figured.

Will you tell me, Mr. Editor, in the name of common sense, why motions should not be set down or entered in some manner which would admit of their being, in ordinary cases, taken with some regard to the priority to which, in point of time, they would appear to be respectively entitled? J. C.

#### COSTS OF SETTING ASIDE JUDGE'S ORDERS.

*To the Editor of the Legal Observer.*

Sir,

Feeling assured that it is not only your wish to "observe," but as far as possible to give publicity to all matters that will in anywise benefit the profession, I beg to bring to your notice a grievance that has always existed, but never to the extent it does at the present time. It is the serious expense that attorneys are put to in reversing the orders of judges made at chambers. The practice is, when you appeal against a judge's order, and succeed in reversing it, you *individually* have to pay the costs out of your own pocket. Why? not because you were in error, but because the *judge* was misinformed. Some attorneys charge these kind of expences to their clients, but their doing so makes it very oppressive to them; and the attorney frequently pays them out of his own pocket, and thereby decreases the very small profits which his profession now produces him to a still lower ebb.

I do not intend to urge for one moment that the learned judges ought to pay the costs themselves, but I do mean to contend that some steps ought to be taken to prevent the oppression to the attorney. The reason, I conceive, of so many orders being reversed is, that the new judges, for want of practice, are not conversant with points of detail, although otherwise they may be exceedingly able lawyers. The only course that I can point out to do away with this grievance, and to make (according to the act of parliament), the practice of the Courts both uniform and settled, is to appoint one judge to sit constantly at chambers, and he would in a short time become so well acquainted with the practice that appeals would rarely occur.

W. H. S.

### SELECTIONS FROM CORRESPONDENCE.

#### ADMISSION OF PALATINE COURT ATTORNEYS INTO THE SUPERIOR COURTS.

*To the Editor of the Legal Observer.*

Sir,

I beg to draw your attention to a case reported in your last volume, p. 509.

"Where an attorney of the County Palatine of Lancaster is desirous of being admitted in the Superior Courts, he will not be relieved from undergoing the usual examination." Now the above decision is wrong, both in law

and principle. It is in contradiction *in toto* for a legislative enactment. By the 9 G. 4, c. 49, s. 4, it was provided that an attorney of the Court of Pleas at Lancaster, may, as a matter of course, be admitted of the Courts at Westminster, on paying a certain "additional" duty. Now, in fact, looking strictly at that enactment, attorneys admitted in the Court of Pleas at Lancaster, are considered and have a right to practise as attorneys there; and upon the payment of the "additional" duty, and signing the roll, they have a right to practice in any of the Courts at Westminster. If they are bound to go through the ordeal of examination, they must also go through the ordeal of a re-admission, and the act becomes a "dead letter." The decision, I presume, is founded on the new rules as to examination of attorneys, but it is submitted, that those rules are not in the least applicable to this case, for the applicant may be a man of years, and only have given his mind and attention to one branch of the law, viz. Conveyancing; and perhaps, may never require to puzzle his brain over the multiplicity of cases and rules to arrive at a just conclusion of the proper steps to be taken in a Chancery suit or an action at Law.

W. H. S.

[The words of the section referred to are, "that upon payment of the sum of 120*l*." &c. and "the person having served, *shall be capable of being admitted an attorney or solicitor in any one or more of the Courts at Westminster.*" This is no repeal of the previous acts, which directed the Judges to inquire into the fitness and capacity of persons applying to be admitted.—ED.]

#### STAMP DISTRIBUTORS.

Sir,

It is a fact sufficiently notorious, that every petty market town in the kingdom has a stamp distributor, at whose office solicitors may purchase stamps; yet, strange to say, the Borough of Southwark, with a population, according to the last decennial census, of between 300,000 and 400,000 persons, is without such an office, whereby the professional gentlemen resident in it sustain much inconvenience and delay in procuring stamps, which, in cases of emergency, are often required at the moment, and they are compelled to go to Somerset House,—a distance of about three miles, and in some cases exceeding four miles to obtain them, thereby occasioning much delay. Surely on a proper representation to government by the Incorporated Law Society, the evil would be instantly remedied by the appointment of a functionary, who should be provided by the commissioners in the usual way, with all stamps for distribution. Formerly, the borough possessed such a convenience: why it was withdrawn doth not appear.

A SOLICITOR.

#### RETURN OF PREMIUM.—BANKRUPTCY.

Sir,

It having been held in a recent case (*ex parte Prideaux*, 3 Mylne and Craig, 327), that an

articled clerk to an attorney is not an apprentice within the meaning of the 49th section of the Bankruptcy Act, 6 G. 4, c. 16, I submit to you the propriety of the Incorporated Law Society endeavouring to obtain a legislative enactment to meet the case, which is clearly within the mischief intended to be remedied by the act.

A SOLICITOR.

## SUPERIOR COURTS.

### Vice Chancellor's Court.

#### WILL.—CONSTRUCTION.

*A testatrix, in execution of a power, appointed 150*l*. a-year to her husband, part of the dividends on 10,000*l*. consols, or of the securities in which the same should be vested at her death; and so much as should not be necessary to be set apart for that purpose, she gave to J. R. B. The consols were sold out, and the proceeds vested on mortgage after the execution of the appointment, and remained so vested until testatrix's death, when it was called in: Held, that in whatever security the money should be again laid out, a sufficient sum should be set apart to produce the annuity of 150*l*.*

A testatrix by her will, dated in 1806, gave to her executors 10,000*l*. 3 per cent. reduced bank annuities, upon trust, during the life of Mrs. Elizabeth Schenck, to pay the interest and dividends to her separate use, independent of her husband; and after her death, to pay the same to such persons as she should in her lifetime by deed or will appoint; and the testatrix empowered Mrs. Schenck to appoint by will to Colonel Schenck, her husband, any annual sum, not exceeding 150*l*. a-year, to be paid to him half-yearly, during his life, out of the interest, dividends, and annual produce of the said trust money. Mrs. Schenck by her will, dated in 1813, and made pursuant to and in execution of the power given her by the will of the first testatrix, bequeathed and appointed the annual sum of 150*l*., part of the interest, dividends, and annual produce of the said 10,000*l*., or of the stocks, funds, or securities into or upon which the same should be charged or secured at her death, unto her husband Colonel Schenck; and after his death, she bequeathed and appointed so much or such part of the said sum of 10,000*l*. 3 per cent. reduced annuities, or of the stocks, funds, or securities into and upon which the same should be charged or secured, from which the said annual sum of 150*l*. should have arisen, to Arabella Bullock; and as to so much and such part of the said sum of 10,000*l*. 3 per cent., &c. or the stocks, &c. upon which the same might be charged or transferred at his death, which should not be necessary to set apart in pursuance of her said will and the appointment therein contained for the benefit of Colonel Schenck for his life, she bequeathed and appointed the same to J. B. Brown, his

executors, administrators, and assigns. Arabella Bullock died in the lifetime of the testatrix, Mrs. Schenck, who thereupon made a codicil to her said will, and thereby gave, after the death of her said husband, so much of the said 10,000*l.* 3 per cent., &c. or of the stocks or securities into or upon which the same should be then charged, from which the said annual sum of 150*l.* should have arisen, among such of Mrs. A. Bullock's daughters as should be living and unmarried at the time of testatrix's death. Between the times of the dates of the will and codicil of Mrs. Schenck, the executors and trustees of the will of the first testatrix sold out, at Mrs. Schenck's request, the 10,000*l.* 3 per cent. reduced annuities, and invested the proceeds on mortgage of freehold estates, at 5 per cent. interest. After Mrs. Schenck's death, notice was given by the owner of the equity of redemption of the mortgaged premises of his intention to redeem; whereupon Mrs. Bullock's children filed this bill, and prayed for a direction against the executors and trustees of the first testatrix's will, that a sufficient sum be set apart out of the said testatrix's estate to pay 150*l.* a-year to Colonel Schenck during his life, and for a declaration that the plaintiffs should be entitled to that fund after his death.

The cause having come to be heard before the Vice Chancellor,

Mr. Knight Bruce and Mr. Wilbraham, for the plaintiffs.—At the death of Mrs. Schenck the fund produced 5*l.* per cent., but any reduction of the interest by the redemption of the mortgage ought not to prejudice Colonel Schenck, to whom his wife, under the power given her, intended to bequeath 150*l.* a-year certain. Any reduction in the interest of the fund should not prevent his receiving his full annuity. *May v. Bennett*,<sup>a</sup> *Trevor v. Trevor*.<sup>b</sup>

Mr. Ilid Nicholl, for Colonel Schenck, used similar arguments with those which were urged for the plaintiffs, insisting that the intention of Mrs. Schenck clearly was to give 150*l.* a-year certain to her husband, which the power in the former will fully warranted her to do.

Mr. Jacob and Mr. L. Shadwell, for the defendant J. R. Brown, and his assignees, observed, that the power given by the first will to charge the securities enured only during Mrs. Schenck's life; the power was gone at her death. Whatever was the sum necessary to produce the 150*l.* a-year at her death, so much only would the Court now set apart of the capital for producing the annuity. That was half the 10,000*l.* stock, which being now reduced to about 6000*l.* in money, 3000*l.* only would be set apart for the annuity. Where a specific sum was the subject of gift, the residuary legatee was as much a specific legatee as the person to whom part was given for life. If the construction insisted on by the plaintiffs were to be admitted, the amount of Mr. Brown's legacy would be uncertain and ambulatory until the death of Colonel Schenck.

The present fund should be apportioned between the parties.

The Vice Chancellor said, that when this case was argued before him a few days ago, he had a very strong impression in favour of the construction contended for by the plaintiffs; but he was anxious to see the will of Mrs. Legh, the original testatrix, in order to collect every light that might be derived from it on the subject. The difficulty had arisen thus: Mrs. Schenck, meaning to divide the fund into two parts, had not used the same language with regard to both: the language of the latter part was not correlative with that of the first part. Nothing was more plain than this: that she first intended her husband, at all events, to have 150*l.* a-year arising from the interest of a portion of the fund, whatever that might be, and that fund afterwards to be given to Mrs. Arabella Bullock, which should by reason of its magnitude in *corpus* represent that portion of the whole out of which the 150*l.* should have arisen. Having given that, all the rest was meant to go to Mr. Brown; and it came to this, that she had by a blunder of language, and not being aware of the course this Court would adopt, after giving a certain part, so given the remainder, as if she meant to trench on the part first given. What would the Court have done if it had not found the fund in consols or reduced 3 per cent. bank annuities? His Honor did not consider what it would have done if it had found it invested on private security, namely, on mortgage, with some private arrangement subsisting that the interest should be unaltered and the money not liable to be called in and paid off. He considered that this Court would, in administering the equity that arose on Mrs. Schenck's will, have ordered the fund into Court, to be vested in consols, &c. Out of such fund Colonel Schenck would be entitled to receive 150*l.*, and the remainder would go to Mr. Brown. It was his opinion that Colonel Schenck was entitled to recover 150*l.* a-year for life. The surplus alone belonged to Mr. Brown and his assignees. The costs should be paid out of the whole fund.

*Bullock v. Thomas and others*.—Sittings at Lincoln's Inn, before Easter Term, 1839.

### Rolls Court.

#### LEGACY.—EVIDENCE.

*A testator gave A. the sum of 100*l.*, "which said sum is owing to me by bond from A.'s father." In a suit by A. against the executor for the legacy, an affidavit by A.'s father was offered in support of the answer, admitting the existence of the bond, but stating circumstances which went to shew it was fraudulent: Held, the legacy was specific, and that the affidavit was not admissible, on the ground of interest; but whether the bond was good or not, further inquiry was directed before the Master.*

David Morgan by his will, dated July 1822, bequeathed to his granddaughter, Mary Davies, the sum of 100*l.*, "which said sum is owing to

<sup>a</sup> 1 Russ. 370.

<sup>b</sup> 5 Russ. 24.

me by bond from her father, Edward Davies," and he appointed his son, William Morgan, his executor, who proved the will, and took possession of the property left by the testator, to the amount of 200*l*. Mary Davies, on attaining her age in 1834, applied to the executor for payment of the legacy, and on his refusal she filed this bill against him. The bill, after setting forth the will, and stating that Edward Davies, plaintiff's father, owed the testator, at the time of his death, 100*l*. by bond, prayed that she might be declared entitled to the legacy secured by the said bond, and for an account of what was then due to her in respect of the same, and that defendant might be decreed to pay what should be found due on such account. The defendant by his answer, stated that previous to the marriage of Edward Davies with Mary Morgan, testator's daughter, in 1813, John Davies, the father of Edward, objected to the portion of 250*l*. offered by the testator with his daughter, as insufficient; whereupon Edward Davies and the testator entered into a scheme to deceive John Davies, by the testator agreeing to execute two bonds, one for 300*l*., and a second for 100*l*., to Edward Davies, who in return executed two bonds to the testator, one for 100*l*., and a second for 50*l*., payable at a future period. The testator paid 40*l*. on the bond for 300*l*., and received that bond from his daughter, Mrs. Davies, without consent of her husband. The testator at his death held the two bonds of Edward Davies, who then also held the testator's bond for 100*l*. The answer stated that the 100*l*. bond given by Edward Davies was the bond mentioned in the will, and that the defendant being advised that it was concerted in fraud, did not take any proceedings to recover the amount, and that if he had, Edward Davies would be entitled to set off the testator's bond for 100*l*. in his possession. In support of the answer, the defendant obtained an affidavit from Edward Davies deposing to these facts respecting the exchange of bonds, &c. Three questions were raised on the bill and answer—*first*, whether the said bequest was a specific legacy; *secondly*, whether the affidavit of Edward Davies was admissible in evidence; and *thirdly*, whether the bond was good under the circumstances.

Mr. Pemberton and Mr. Cole, for the plaintiff, contended that the bequest was a pecuniary legacy, with a fund pointed out for the payment; and in default of that fund it was payable out of the general assets of the testator. It was the fault of the defendant that he did not recover the amount of the bond. His testator's estate, however, had the benefit of it, as according to his answer there was a set-off to this bond by the bond in the hands of Edward Davies. There was no pretence for saying this was a specific legacy. *Fowler v. Willoughby*.<sup>a</sup> Edward Davies having a direct interest in this suit, his affidavit was not admissible in evidence: it went clearly to discharge him from payment of his bond. There was

no evidence to impeach the bond, and there was no ground to presume satisfaction.

Mr. Girdlestone and Mr. Bigg, for the defendant, insisted that this was a specific legacy, and it was so treated by the allegations and prayer of the plaintiff's bill. It was clear by the words of the bequest that what the testator intended to give was the identical sum secured by the bond. Edward Davies cannot take any benefit from a decree in this suit, whichever way it goes, and therefore his affidavit of the circumstances under which the bond was given ought to be received in evidence, as he is the only person now living who can speak to this transaction. The evidence of an interested witness may be read in a suit in equity, under the act 3 & 4 W. 4, c. 42, ss. 26 & 27: it was so held by the *Vice Chancellor*. *Wheat v. Graham*.<sup>b</sup> This affidavit would shew that the bond was fraudulent, and therefore void.

Lord Langdale, M. R., after reading the words of the bequest, said, he was of opinion that the words "which said sum is owing to me by bond," &c. shewed that it was the sum secured by the bond that was bequeathed, and the legacy therefore was specific. With respect to the affidavit, he was clearly of opinion that it could not be received, as Edward Davies had an interest in the subject of the suit, though he could not have any benefit from the decree. The real question between the parties was, whether the bond was valid or not. As the affidavit could not be admitted in evidence to shew the circumstances stated in the answer respecting the bond, the Court was not in a situation to determine that question. There was, however, enough stated in the answer to justify the Court in calling for further inquiry. That inquiry must be whether the bond is a valid subsisting instrument, and if it is so, whether the defendant could have recovered on it. Let there be a reference to the Master, with liberty to state special circumstances.

*Davies v. Morgan*.—Sittings at the Rolls, Chancery Lane, before Easter Term, 1839.

#### Queen's Bench.

[Before the Four Judges.]

##### INSOLVENT.—SECRET AGREEMENT.

- A. being in insolvent circumstances offered his creditors a composition of 8*s* in the pound.  
B. one of the creditors, refused, but afterwards made a secret agreement with A. to be secured the full amount of his debt by bills for the difference. B. then signed the composition deed. The bills were given, and afterwards paid: Held, that A. could not recover back the amount as money had and received to his use, and that it made no difference whether he paid the bills in consequence of an action brought against him on them, or without such action being brought.

This was an action for money had and received, and was brought to recover a sum of

<sup>a</sup> 2 Sim. & Stu. 354.

<sup>b</sup> 7 Sim. 62.

30*l.* paid by the plaintiff to the defendant under the following circumstance:—The plaintiff had been in business, and the defendant was one of his creditors. The plaintiff having become embarrassed, called his creditors together, and proposed to pay them a composition of 8*s.* in the pound. The defendant refused to accept the proposed composition, but communicated to the plaintiff, without the knowledge of the other creditors, that he would give his consent to the composition if the rest of his debt was secured to him in another way. The plaintiff being desirous of getting the composition effected, agreed to buy off the opposition of the defendant by securing him the amount of the difference. He therefore accepted a bill of exchange drawn by a person named Preston, a clerk of the defendant, for the sum of 30*l.* which was the amount of the difference between the composition and the full debt. The defendant then acceded to the composition. When the bill became due it was paid. The plaintiff now sought to recover back the amount. The defendant pleaded *non assumpsit*. The cause was tried before Lord Denman, C. J., at Guildhall, when his lordship expressed an opinion that the defendant having obtained the money in fraud of the other creditors, was liable to refund it, and therefore directed a verdict for the plaintiff. A rule had since been obtained to set aside this verdict, and enter a nonsuit.

Mr. Platt and Mr. Richards shewed cause. This is not a case of voluntary payment, nor do the cases on that subject bear upon the present. In all those cases there is an absence of fraud, but the main feature of this case is the fraud, and this case must therefore be decided on the rule which applies to frauds practised by one creditor in common with the debtor upon the rest of the creditors. The payment here was not voluntary. Here the bill was extorted from the debtor by pressure, and the same means secured to the defendant the payment of it. The test by which to decide this case is, whose money is that which is the subject of the action? It is the money of the plaintiff, and the defendant therefore must be taken to have received it for the plaintiff's use. *The Duke de Cadaval v. Collins*<sup>a</sup> shews that the money is still the money of the plaintiff. There the plaintiff paid the money under the pressure of an illegal arrest, and he was afterwards allowed to recover it back as money had and received to his use. [Lord Denman, C. J.—That case would be more like the present, if the money here had been paid at the time that the agreement was made. Why should not this plaintiff have defended an action on the bill, instead of waiting to bring the present action.] If the defendant is now permitted to retain this money, he will be made the lawful holder of it, notwithstanding the principle of law which declares that no person shall acquire a property in money obtained by his own fraudulent act. This money was obtained by one creditor in

fraud of the others,—it never ceased to be the property of the insolvent. [Lord Denman, C. J.—*Smith v. Cuff*,<sup>b</sup> is the same, with this exception, that there the bill had been negotiated; but suppose that the plaintiff had merely made a promise to pay, and had chosen to keep his promise, could he afterwards have come to the Court to ask to recover back the money he had paid?] Under such circumstances as exist in this case, he could, for the law will not permit a creditor successfully to practise such a fraud. [Lord Denman, C. J.—But then the law gives the debtor the means of resisting the fraud.] But he is not bound to employ those means in the first instance. The fraud makes the whole transaction void, and no property is transferred. The whole transaction is a *nudum pactum*. [Lord Denman, C. J.—You must argue that it is worse than a *nudum pactum*—that it is an agreement, not without a consideration, but with a bad and fraudulent consideration. Still, if one of the two parties with a full knowledge of the facts, chooses to pay the money, can he afterwards recover back that money?] He can, because no property has passed. In all the cases from *Cochshott v. Bennett*,<sup>c</sup> to the present time, the doctrine established is, that where there is an arrangement between an insolvent and a body of creditors, it shall not be lawful for any one to secure for himself an advantage not enjoyed by the other creditors. This, therefore, is not the money of the debtor, but of the other creditors. It is clear that what is unlawful cannot, if done, confer any right on those that do it. The defendant cannot therefore retain what he has unlawfully obtained. If the money had been paid at the time of the arrangement, there would have been no doubt upon the matter. The fact that it was not paid till afterwards, cannot make any difference in the legal result. There is one case which is very strong on this point. It is the case of *Turner v. Hoole*,<sup>d</sup> the marginal note of which is in the following terms:—"Where a creditor had signed a composition deed in favour of his debtor, but afterwards induced the latter to give him bills for the full amount of his debt, dated the day before the composition deed, and after receiving one instalment sued the debtor upon the bills and recovered the amount minus the instalment paid: Held, that the debtor might maintain an action for money had and received, against the creditor, to recover the difference between the amount of the composition and the full amount of the debt." [Lord Denman, C. J.—I do not see, according to the marginal note, how that could be a case of fraud, for the instrument there was obtained afterwards.] But though it was given afterwards, it was ante-dated. In *Alanger v. Spalding*,<sup>e</sup> the defendant held as a security for a debt due to him a policy of insurance

<sup>b</sup> 6 Maule & Selw. 160.

<sup>c</sup> 2 Term Rep. 763.

<sup>d</sup> 1 Dowl. & Ry. N. P. Cas. 27.

<sup>e</sup> 1 Arnold, 181; 4 Bng. N. C. 407.

<sup>a</sup> 4 Ad. & Ell. 858; 2 Har. & Wol. 54.



effected by his debtor. The policy was secretly assigned to the defendant, who then signed a composition deed. The policy was paid, but the full amount of the composition agreed upon was not paid. The debtor became bankrupt, and his assignees were held entitled to recover the amount of the policy. The case of *Smith v. Cuff* was pressed on the Court in the argument in *Alsager v. Spalding*, and *Turner v. Hoole*, and as Serjt. Talfourd was unable to distinguish the latter case from the one which he was arguing, the Court adopted the doctrine in that case, and made the rule absolute against him. That case has therefore been distinctly recognized. *Cotman v. Waller*,<sup>f</sup> and *Hills v. Street*,<sup>g</sup> are illustrations of the same principle.

Mr. Kelly in support of the rule.—There can be no reasonable doubt that this action is not maintainable. It is admitted that if the money had been obtained by extortion or duress, or fraud, or by any compulsion whatever, the defendant could not retain it against the demand of the plaintiff. All the authorities shew that the money never could have been recovered by the defendant against the plaintiff upon the bill. But it is on that very ground that the plaintiff, having paid it, cannot now recover it back. It has been a voluntary payment on his part. The cases which have been cited, with the exception of *Hoole v. Turner*, are not applicable. [Lord Denman, C. J.—You might admit, without injury to your argument, that if the present defendant had arrested the plaintiff, and so obtained the money, the plaintiff could not have maintained the action]. That would bring the case nearer that of *Cadaval v. Collins*. The note of the case of *Turner v. Hoole*, is in Harrison's Digest; but if the note properly represents the case itself, then it is submitted that that case is bad law.

Lord Denman, C. J.—I feel no difficulty in this case but what arises from the case of *Turner v. Hoole*. It is better therefore that we should look at that case, the more so as there is something singular in the report of the case of *Alsager v. Spalding*, in Bingham.

*Cur. adv. vult.*

Lord Denman, C. J.—I think that this rule must be made absolute. The principle on which I proceeded at *nisi prius* is right, but it did not apply. The principle which ought to have been applied to this case, is the well known principle of law that a creditor cannot be allowed to take advantage of circumstances to extort from the debtor securities in fraud of the other creditors. But there is another principle of law which is equally well established, namely, that when a man has voluntarily paid money, he cannot recover it back, if at the time of the payment he knew all the facts, for as to the law he must be supposed to be acquainted with that. *Marriott v. Hampton*,<sup>h</sup> is an authority for that, and that principle we were not interested in impugning in the case

of *The Duke de Cadaval v. Collins*. It is true that the test applied there was, whose money is it that is the subject of the action? and the answer was, that it was still the money of the Duke of Cadaval. But apply that principle here. Can we say that this is money had and received by the defendant to the use of the plaintiff? when in fact the defendant recovered it from the plaintiff in a proceeding where the same defence might have been set up to the demand which is now set up as the ground of the claim. I think that the payment under such circumstances is in the nature of an estoppel, and that one party having succeeded against the other, the point in contest between them cannot again be set up when it has once been decided.

Mr. Justice Littledale.—I fully concur with the Lord Chief Justice on both points.

Lord Denman, C. J.—My brother Patterson reminds me that in this particular case there was no action, only that the payment of the bill was made in the regular manner, when it was presented on becoming due. But still the principle is the same, because if the ground on which this action is sought to be maintained is valid, it would equally have been valid as a defence to a claim for the payment of the bill.

Mr. Justice Patterson, and Mr. Justice Coleridge concurred.

Rule absolute.—*Wilson v. Ray*, E. T. 1839. Q. B. F. J.

### Common Pleas.

#### TROVER ON BILL OF EXCHANGE.—TITLE OF DEFENDANT.—PLEADING.

*To a declaration in trover for a bill of exchange, a plea that after the drawing and accepting of the bill, and before the same became due, and while it was in the possession of the plaintiff, she indorsed the same in blank, and that at the time of the supposed conversion by the defendant, one R. was possessed of it by virtue of the said indorsement, and that he being the holder, offered the bill as a security to the defendant for a debt of 35l., and that the defendant then believing, as he still believed, that the said R. was lawfully possessed of the bill, and had good and sufficient right, title, and authority to negotiate it, accepted it, and it was accordingly delivered over to the defendant: Held ill, for duplicity. A replication to such a plea, alleging that at the time of the defendant so taking and receiving the said bill from R. he had notice and well knew that R. had not good and sufficient right, title, and authority to give him the bill: Held good, as traversing the material allegation in the plea.*

This was an action of trover, brought to recover possession of a bill of exchange for 100l., indorsed to the plaintiff.

The defendant pleaded—first, Not Guilty; secondly, a denial of the plaintiff's property in the bill; thirdly, that before and at the time

<sup>f</sup> 2 Younge & J. 212.

<sup>g</sup> 5 Bing. 37; 2 Moore & P. 96.

<sup>h</sup> 7 Term Rep. 269.

of the alleged conversion of the bill, the plaintiff became possessed thereof, and being so in possession of it, before it became due she indorsed the same to the defendant for a good and valuable consideration, by means whereof the defendant became the lawful holder, and continued so until and at the time of the said supposed conversion; fourthly, the defendant pleaded that after the drawing and accepting of the said bill, and before it became due, it was in the possession of the plaintiff, and that she indorsed it in blank, and that at the time of the supposed conversion of it, one Rawlings was possessed of it by the said indorsement in blank of the plaintiff, and that the said Rawlings, being the holder of the said bill, offered the same to the defendant as a security for a debt of 35*l.* due to the said defendant, and that he the said defendant believing, as he still believed, that the said Rawlings was lawfully possessed of the said bill, and had good and sufficient right, title, and authority to negotiate the same and deliver it to the defendant, received it as a deposit, by means whereof the said defendant became and was the lawful holder of the said bill.

The plaintiff replied, demurring specially to the third plea, and as to the last plea, that at the time of the defendant so taking and receiving the said bill from Rawlings the defendant had notice and well knew that Rawlings had not good and sufficient right, title, power and authority to deliver the said bill to him.

The defendant demurred also to the replication of the plaintiff. Joinder.

*Stephen, Serjt.*, for the plaintiff, in support of the demurrer, to the third plea said that his objection to it was that it was inconsistent and repugnant. It was impossible to understand what state of facts was intended to be set up by the allegations contained in the plea; for the assertion that the plaintiff was possessed of the bill "before and at the time of the conversion," was certainly inconsistent with and opposed to the suggestion of the indorsement to the defendant. The possession must be taken to be that which was stated in the declaration, which was, of course, the lawful possession, so that there were two different lawful holders of the bill.

*Huggins, contrd.*—The statement that "before and at the time of the said supposed conversion" was merely introduced to shew the time when the fact subsequently averred took place. The defendant merely introduced the unnecessary allegation that the plaintiff said that a conversion had taken place, and he denying that there was any conversion in reality, said that at the time of the said "supposed" conversion, the defendant was himself possessed of the bill. The plaintiff might have taken a plain and intelligible issue on the plea, by saying that she did not indorse, and the objection merely amounted to one that the defendant had taken a round-about way of alleging the time.

The Court having expressed an opinion that the plea might be amended,

*Huggins* proceeded to argue in support of

his demurrer to the replication. The ground of demurrer was that there was no averment that Rawlings had not good and sufficient authority to deposit the bill with the defendant, and therefore that it was not a substantial traverse of the plea. It contained two propositions in one affirmative, which were that Rawlings had no authority, and that the defendant knew that he had none.

*Stephen, Serjt., contrd.*—The replication took issue upon the allegation of the belief of the defendant as to the title of Rawlings to pass the bill. That was the substantial matter in the plea, and if the defendant chose in his pleading to leave the real matter in dispute unanswered, and go to an inferior and less important part of the case, the plaintiff might take issue in his replication upon the matters rested upon, and if the allegations were material and necessary to the defence, they were well traversed. The plea here, however, was bad in substance. The plea was one in confession and avoidance. The plaintiff in her declaration says that she was properly possessed of the bill, and that was not denied. The bill was then alleged by the plea to have been indorsed in blank, and that Rawlings was the holder, and was possessed of the bill; but there was no averment that he was the lawful holder. This then was quite consistent with the supposition that Rawlings might have acquired the possession of the instrument improperly or unlawfully. The indorsement in blank would carry it to any one, and it might have been lost, and Rawlings having found it, might by that means have become the holder. The plea besides was bad; for the handing of the bill to the defendant for an antecedent debt was no answer to the action, but it should be for a new consideration advanced. But, at all events, if he knew that Rawlings had no title, it was necessarily bad. *La Channot v. Bank of England*, 9 B. & C. 213, would establish this proposition. There were cases, however, which went to shew that even if there had been a new advance by the defendant, it was necessary for him to allege that he had no knowledge of the defect in the title of the assignor of the bill. *Huines v. Foster*, 4 Tyr. 65. At common law, the defendant admitting the original title to be in the plaintiff was not allowed to allege that it was in another, unless by shewing a regular transfer; but for the advantage of commerce it was permitted him to say that he could not prove the transfer, but would prove that he gave a good consideration for it; but here he had done neither. The knowledge which the defendant was alleged to possess was then material, and the allegation in the plea to which it was replied was an essential part of it. *Evans v. —*, 1 B. & Ad. 534; *Fronter v. —*, 8 Taun. 103; *Collins v. Martin*, 1 Bos. & Pul. 649. *Fancourt v. Bull*, 1 Bing. N. C. 688, was a case very similar to the present, and the judgment of the Lord Chief Justice was strongly in point. It was not a case of title defectively pleaded, but of an absolute absence of title.

*Hoggins*, in reply.—*Prima facie* the blank indorsement imported consideration for the transfer of the bill. The fourth plea set forth its legal negotiation, and the person who had negotiated it was to explain all the hypotheses suggested on the other side, and not the defendant. The indorsement in blank was a sufficient authority for the defendant to have the bill in his possession.

*Tindal*, C. J.—It appears to me, that in the state of the pleadings in this case, the plaintiff is entitled to our judgment upon the demurrer to his replication to the fourth plea. I have very great doubt whether the plea itself is a plea good in substance. It is a very arguable matter that it is bad, because it does not allege that Rawlings, through whom the defendant derives his title, had any authority to pledge the bill at all. It does not then set up any new consideration for the delivery of the bill by a person not being the lawful holder. But it seems to me unnecessary to give any opinion on that point, for the ground of my decision is, that in the present state of the pleadings, the replication has tendered an issue upon a material fact between the parties. The fourth plea begins by stating that before the bill became due and payable according to its tenor and effect, and while it was in possession of the plaintiff, she indorsed the same in blank, and that Rawlings, at the time of the conversion by the defendant, was by virtue of such indorsement the holder thereof. It does not say that he was the lawful holder. Now if we are to take this as an allegation that he is the lawful holder, it makes a good title for the defendant; for if he was the lawful holder of the bill he had a right to deliver it, and to deal with it as he pleased. Then there is another averment, that the defendant, not at all knowing that Rawlings had no title, took the bill from him in the thorough belief that he had a title, for a pre-existing debt between the parties. Taking these two circumstances, therefore, to be alleged on the face of the plea, it becomes double, in leaving it uncertain whether it intends to say that Rawlings was the lawful holder, or that the defendant took it from him for the value of the bill without notice. In order to make it out a good plea we can only take the first allegation, which is left in *ambiguo*, and this then is a replication that Rawlings had no good title. Then taking it to be so, the plea sets out and alleges that Rawlings, who the defendant knows now at last, is set up by the plaintiff as having no title at all, gave the defendant the bill, and that he took it from him *bond fide*, without any notice or knowledge of the defect in his title. Then what is the effect of this plea? The question really is, whether the defendant at the time of taking the bill had any notice of the defect in Rawlings' title, and the replication takes issue on that question. On this state of the pleadings, therefore, construing the plea most beneficially for the defendant, a material and proper issue is raised, and the plaintiff is entitled to judgment.

The rest of the Court concurred.  
Judgment for the plaintiff. — *Hilton v. Swann*, E. T. 1839. C. P.

## CHANCERY SITTINGS.

TRINITY TERM, 1839.

### Before the Lord Chancellor.

At Westminster.

Wednesday May 22	Appeal Motions.
Thursday .. 23	{ The Queen's Birth-day (No Sitting.)
Friday .. 24	Petition-day.
Saturday .. 25	} Appeals.
Monday .. 27	
Tuesday .. 28	
Wednesday .. 29	
Thursday .. 30	Appeal Motions & ditto.
Friday .. 31	} Appeals.
Saturday June 1	
Monday .. 3	
Tuesday .. 4	
Wednesday .. 5	} Appeal Motions & ditto.
Thursday .. 6	
Friday .. 7	
Saturday .. 8	
Monday .. 10	} Appeals and Causes.
Tuesday .. 11	
Wednesday .. 12	Appeal Motions and ditto.

Such days as his Lordship is occupied in the House of Lords, excepted.

### Before the Vice Chancellor.

At Westminster.

Wednesday May 22	Motions.
Thursday .. 23	{ The Queen's Birth-day (No Sitting.)
Friday .. 24	{ Petition Day—Short Causes previous to Petns.
Saturday .. 25	} Pleas, Demurrers, Causes, Exceptions, & Further Directions.
Monday .. 27	
Tuesday .. 28	
Wednesday .. 29	
Thursday .. 30	Motions.
Friday .. 31	{ Short Causes, unopposed Petitions, and Causes.
Saturday June 1	} Pleas, Demurrers, Causes, Exceptions, & Further Directions.
Monday .. 3	
Tuesday .. 4	
Wednesday .. 5	
Thursday .. 6	Motions.
Friday .. 7	{ Short Causes, Unopposed Petitions, and Causes.
Saturday .. 8	} Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Monday .. 10	
Tuesday .. 11	
Wednesday .. 12	

### Before the Master of the Rolls.

In and after Trinity Term, 1839.

AT WESTMINSTER.

Wednesday May 22	Motions.
Thursday .. 23	{ Petitions in the General Paper.

Friday ..	24	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday ..	25	
Monday ..	27	
Tuesday ..	28	
Wednesday ..	29	Motions.
Thursday ..	30	
Friday ..	31	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday June 1	1	
Monday ..	3	
Tuesday ..	4	
Wednesday ..	5	Motions.
Thursday ..	6	
Friday ..	7	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday ..	8	
Monday ..	10	
Tuesday ..	11	
Wednesday ..	12	Petitions in the General Paper.
Thursday ..	13	Motions.

*At the Rolls.*

Thursday .. 13 { Short Causes, after swearing in the Solicitors.

Short and Consent Causes, and Consent Petitions, every Tuesday, at the Sitting of the Court.

## COMMON LAW SITTINGS,

*In and after Trinity Term, 1839.*

## Queen's Bench.

*In Term.*

MIDDLESEX.		LONDON.	
Thursday ..	May 23	Tuesday ..	June 11
Monday ..	27		
Monday ..	June 10		

*After Term.*

Thursday .. June 13 | Friday .. June 14

The Court will sit at eleven o'clock in term, in Middlesex; at twelve in London, and in both at half-past nine after term.

Long causes will probably be postponed from the 23rd and 27th of May to June 13th; and all other causes on the list for the 23rd and 27th of May, will be taken from day to day until they are tried.

Undefended causes only will be taken on June 10th.

Short defended as well as undefended causes entered for the sitting on June 11th, will be tried on that day, if the plaintiffs wish it, unless there be a satisfactory affidavit of merits.

The court will probably sit in banc instead of at Nisi Prius for 6 days beyond the term.

## Exchequer of Pleas.

*In Term.*

## MIDDLESEX.

1st Sittings.	Friday ..	May 24
By Adjournment	{ Saturday ..	25
(if necessary),	{ Monday ..	27
2d Sittings.	Wednesday ..	June 5
By Adjournment	{ Thursday ..	6
(if necessary),		

## LONDON.

1st Sittings. Friday, May 31.

2d Sittings. Saturday, June 8.

By Adj. (if necessary), Monday, June 10.

*After Term.*

## MIDDLESEX.

## LONDON.

Thursday .. June 13 | Friday .. June 14

The Court will sit during Term at ten o'clock.

For the *Common Pleas Sittings Paper*, see page 31, *ante*.

## LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

## House of Lords.\*

To secure to Proprietors of Designs for Articles of Manufacture the Copyright of such Designs for a limited time.

[Passed.]

For extending the Copyright of Designs for Calico Printing to designs for printing other woven fabrics.

[Passed.]

To improve the Practice and Proceedings in the Court of Pleas of Durham.

[For 2d reading.]

For the better protection of Purchasers against Judgments, Crown Debts, and Fiats in Bankruptcy.

[For 3d reading.]

To amend the 39 G. 3, c. 79, for suppressing Seditious Societies.

[For 3d reading.]

To enable Justices of Assize on their Circuits to take inquisition of all Pleas in the Court of Exchequer of Pleas, without Special Commission.

[For 2d reading.]

Small Debts Courts Bill for the following place:

Belper.

## House of Commons.\*

## ADMINISTRATION OF JUSTICE.

To improve County Courts.

[For 2d reading.] Lord John Russell.

For holding District Sessions of the Peace.

[For 2d reading.] Lord John Russell.

For keeping and authenticating non-parochial Registers of Births, Deaths, and Marriages.

[In Committee.] Lord John Russell

For regulating the Police Courts in the Metropolis.

[For 2d reading.]

For the better ordering of Prisons.

[In Committee.] Lord John Russell.

To regulate and enlarge the Summary Jurisdiction of Justices.

Lord John Russell.

[For 2d reading.]

For further improving the Police in and near the Metropolis.

Mr. F. Maule.

[For 2d reading.]

\* Both Houses have adjourned till Monday 27th May.

Small Debts Court Bills for the following places:—

Aberford,	Newark.
Bury, (Lancashire)	Newton Abbot,
Chesterfield,	Nottingham,
Eckington,	and
Glossop,	Mansfield,
Grantham,	Oldham,
Halifax, Hudders-	Pontefract,
field, & Bradford	Rochdale,
Hatfield,	Rotherham,
Kingsbridge and	Tavistock,
Dodbrooke,	Warrington,
Leeds,	West Ham,
Liskeard,	Worksworth,
Liverpool,	Yorkshire.

To enable the Justices at Quarter Sessions to appoint a Clerk of the Peace in certain Cases. [In Committee.] Mr. Pakington.

To abolish Grand Juries. Mr. Pryme.

For regulating the mode of establishing Rules of Proceedings in the Borough Courts of England and Wales. [In Committee.]

To amend the Law relating to double and treble Costs, to pleading the General Issue, and as to Notice and Limitation of Actions. [In Committee.] Sir F. Pollock.

To amend the Law relating to the Custody of Infants. [For 2d reading.] Mr. Serjt. Talfourd.

To amend the Imprisonment for Debt Act, as to Advertisements. [In Committee.] The Attorney General.

#### LAWS OF PROPERTY.

To amend the Law of Copyright.

[In Committee.] Mr. Serjt. Talfourd.

For the Enfranchisement of Lands of Copyhold and Customary Tenure.

[In Committee.] Mr. James Stewart.

For securing the Benefit of Inventions in Arts and Manufactures. Mr. Mackinnon.

To render the Owners of Small Tenements liable to the payment of Rates assessed thereon. Mr. Robert Gordon.

[In Committee.]

#### LAW OF ELECTIONS.

For the registration of Parliamentary Electors. [In Committee.] Mr. Attorney General.

Controverted Elections. Lord Mahon.

[For 2d reading.]

To amend the jurisdiction for the Trial of Election Petitions. Sir R. Peel.

[For 2d reading.]

For assimilating the qualification of Electors as Voters for Coroners to that of the constituency of members of Parliament, and taking the Poll at Election for Coroners in one day. Sir H. Fleetwood.

For extending the qualification of Voters for members in Parliament representing Counties, to the occupiers of houses of the clear annual value of 10*l.* as in Boroughs.

Sir H. Fleetwood.

#### SHERIFFS—HIGHWAYS AND SEWERS.

To amend the Laws relating to Highways.

[In Committee.] Mr. Barneby.

To alter and amend the Laws relating to Sewers. [In Committee.] Mr. Christopher.

To regulate the expences to be incurred by persons serving the office of High Sheriff in England and Wales. [In Committee.]

#### NUMBER OF CANDIDATES FOR EXAMINATION IN TRINITY TERM.

It will be observed by the list of persons applying to be admitted in Trinity Term, which we printed in our last volume, pp. 489, 503, that the total number is . . . . . 151

This includes the notices of several persons who have already been examined, viz. 30

121

To which we have to add these who have served notices of examination, but not of admission . . . . . 10

131

Deduct one who has given notice of admission but not of examination . . . 1

130

#### THE EDITOR'S LETTER BOX.

We beg again to say that we cannot undertake the responsibility of answering cases, which should be laid before counsel or special pleaders for their opinion; but are willing to insert any *moot points* which our correspondents have previously investigated, provided they give the result of their research in a concise manner.

A Candidate inquires "what proportion in number of the Questions in each department required to be answered, will entitle him to a certificate of competency." We believe that a majority of the Questions *correctly* answered in Common Law and Equity, and any one of the other three departments, will be deemed sufficient.

"An Articled Clerk"—having been absent during the second year of his term, for some months (by consent of his master,) and during that time only partially employed as an attorney, and having been advised to enter into a fresh contract with his master to serve him for the lost time, to commence from the expiration of his present articles,—is informed, that the stamp on the fresh contract (the original articles being duly stamped for the 12*0*l.**) need be 3*5*s.** only.

We expect to find room in our next number for a notice of the meeting of the attorneys and solicitors of Ireland relating to Barristers claiming to practise in proceedings by civil bill in Courts of Quarter Sessions.

The second part of the Analytical Digest for 1839 of all Reported Cases was published last Saturday.

The letter from Cardiff on Attorneys' Gowns shall be inserted.

# The Legal Observer.

SATURDAY, MAY 25, 1839.

— "Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## ARREARS IN EQUITY.

WE have now devoted considerable space to the arrears in the Court of Chancery, and to the various plans for diminishing them; and we cannot allow the subject to drop until some relief is provided. We know indeed of no reform which unites so many opinions in its favour; no grievance so generally admitted; and for which a remedy is so universally demanded. We cannot believe that the session is to go on longer, much less to be allowed to close, without a full discussion of the subject. Hitherto, scarcely anything has been said or done; an incidental conversation\* sprung up one evening, in the absence of the law officers of the crown, which led to no result. A notice has also very lately been given by Mr. Freshfield, with respect to the Court of Exchequer, in the following terms,— "Return of the number of days the Court of Exchequer, as a Court of Equity, sat in the dispatch of business, for the ten years ending 1838, inclusive, shewing the number of days the Court sat in each term, and at the sittings after each term."

The object of this return we presume to be to call the attention of the House to the defective mode of administering equity in this Court, and although we do not think that any relief which can be obtained from the equity side of the Exchequer will be sufficient, yet, there can be no objection to rendering this Court as effective as possible. The present state of the Court is thus adverted to by Mr. Miller in his recent work:

"That Court not being a Court of Common Law only, like the other two, but a Court of Equity also, it was called upon in 1817 to

render further aid than it had previously given in disposing of the business which then pressed upon the Court of Chancery. For this purpose the Chief Baron was empowered to sit alone in Equity at such seasons as he might think expedient; and should the Chief Baron be prevented from sitting by sickness or other unavoidable cause, the King was empowered by sign manual to nominate any other Baron to officiate in his stead, whether the ordinary business of Exchequer was going on or not. (57 G. 3, c. 18.) In 1833, and again in 1836, this power of nomination was enlarged, and the Crown may now appoint any puisne Baron to sit in Equity, whenever the Chief Baron may be sitting on the Common Law side of his own Court, at Nisi Prius, or in the Privy Council, but on no other occasion. (3 & 4 W. 4, c. 41; and 6 & 7 W. 4, c. 112.) The whole of these transformations of the Court of Exchequer are objectionable. No periods are fixed by law for the Equity sittings, either of the Chief Baron or his substitute. They may sit on whatever days, or whatever portions of each day they think proper, nothing being inserted in any act of parliament to direct or control them. This discretion is much too large for any Court, especially for one newly erected, and is equally injurious to the bench, the bar, and the suitors. It was evidently the intention at first that none but the Chief Baron, who was almost invariably an Equity lawyer, should preside in the separate Equity Court. The power, however, of appointing a puisne Baron to sit there has been frequently exercised, and cannot fail, in various ways, to prove inconvenient. Comparisons, favourable or unfavourable, will assuredly be made between the chief and his deputy; and though there should not, the frequent change of persons in the same judgment seat, is in itself a serious evil. All parties dislike it, and with reason. Fixed officers afford the best guarantee for fixed rules in the conduct and determination of business; and steadiness and uniformity in procedure and decision, are no where more essential than in the administration of justice."

Now it will be very well to remedy this

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\* See a full report 17 L. O. p. 321.

state of things, and to constitute an effective Court. Still, we trust that this is not all that is to be done. We venture respectfully to call the attention of the Lord Chancellor, now reinstated in his Court with renewed power to afford some redress to its suitors. We much fear that the mere appointment of an additional Judge would not be sufficient; but as this seems a somewhat popular expedient, we should be glad to see it tried, rather than that nothing should be done. If such a bill were once more proposed in the House of Lords, as that House has already passed,—one for the appointment of an additional judge—we do not think it could or would be now opposed by that house; and we are inclined to think that the House of Commons, which threw out Lord Lyndhurst's bill for that purpose, would not be so sturdy at the present moment. If the expense of a new Court is the only obstacle, let us see what Mr. Spence says on this head. He clearly shews that it would not impose any additional burthen on the public.

"It appears from returns made to the House of Commons on the 30th of April, 1838, that there was then the sum of 43,292*l.* 18*s.* 7*d.*, three per cent. annuities, standing in the name of the accountant-general, arising from the surplus of the fees received in the preceding years from the passing of Lord Brougham's Chancery Regulation Bill, above the charges. This sum is clear, and, if required, may be applied for erecting courts and otherwise, as may be necessary; so that it is not necessary that the new Vice-Chancellor should, for any length of time at least, be "perched up in a situation like that of an auctioneer at a mock auction," as the late Mr. Bell stated in his pamphlet of 1830, as to the first Vice Chancellor.

Putting the salary of the new Judge the same as the present Vice Chancellor, the amount would be.....	£	s.	d.
	6,000	0	0
For secretary 500 <i>l.</i> , additional officers 500 <i>l.</i> .....	1,000	0	0
The salary of an additional register at 1,000 <i>l.</i> , and two clerks at 250 <i>l.</i> each.....	1,500	0	0
Casualties .....	1,000	0	0
	£9,500	0	0

This would make an annual sum of 9,500*l.* to be provided for,—not so much as the annual waste of term fees to clerks in court and solicitors above adverted to.

"It does not appear to me that any further provision would be necessary in the other officers, though the addition to the efficiency of the court would probably have the effect of forcing those whose duty it is to look after these matters, to abolish that mischievous en-

cumbrance the Public Office, and to let in the public to the offices of the Masters, and to establish proper regulations for the despatch of business in those offices; in which case, nearly double the quantity of business might be done in those offices, and with greater dispatch.

£9,500 a year, therefore, has to be provided.

The fee fund of the Court of Chancery, as appears by the returns I have referred to, yielded a surplus income, for the year ending 27th of February, 1838, of 5,451*l.* 11*s.* 8*d.* It is now, I understand, 7000*l.* Any additional business done will of course increase this fund, so that we may safely calculate that there will be available from the surplus of the fee fund per annum..... 5,000 0 0

Since the above return was made, one of the six clerks has died, and his fees belong to the public; these fees will yield, as I understand, about.. 1,600 0 0

One Master has died, and another has retired, since the return was made; but, so long as the retiring pension of the latter is payable, the saving by the former event is absorbed. I therefore do not take it into account.

An act was passed last year, authorising the Lord Chancellor to direct a further portion of the dead fund in the Accountant General's hands to be carried to the credit of the suitor's fund. I understand that 200,000*l.* has been so carried over, so that the residue of the 9,500*l.* may well be paid out of this fund. 2,900 0 0

£9,500 0 0  
"If, however, which is next to impossible, these funds should not yield sufficient for the purpose, a small addition to the sum now paid for copies, to the amount of half of the useless term fees I have before mentioned, which would then, in great part, be saved, would be sufficient to make up the deficiency. But the great increase which must result to the fee fund from the additional business, renders it unnecessary to speculate on any increase of fees. The Court of Chancery is indeed growing rich.

From the returns above referred to, the fees annually received, the whole of which, under Lord Brougham's bill, are accounted for, and none of which, as I understand, are made the subject of any very serious complaint, amount to..... 51,711 19 0

	£	s.	d.
Brought forward.....	51,711	19	0
The salaries payable out of those fees amounted to ....	£31,900	0	0
Compensations to the officers whose offices were abolished by that bill, or put on a different footing amounted to .....	£14,360	0	0
Leaving, as before mentioned, an available surplus of .....	5,451	11	8
Now increased, as before mentioned, to .....	7,000	0	0

This is over and above the 43,292*l.* stock, which must now be increased to 50,000*l.*

The amount thus paid for compensations will be continually falling in for the benefit of the public; besides which, there are three of the offices of the six clerks yielding 1,600*l.* a-year each, which will also, under Lord Brougham's bill, fall in for the benefit of the public on the death of the present possessors; so that no excuse can be made for keeping the Court of Chancery as it is, on account of the want of the means of providing for the expense of an additional Court, if indeed that would be an excuse; nay, there are funds in prospect sufficient to afford even additional assistance, whichever of the plans before referred to might be adopted, and for making a further reduction in the fees.

Our readers will, we are sure, pardon the length of the extract, as it completely makes out the point contended for. Here we leave this matter for the present; but we add, from our own sources of information, the present state of the business of the Court of Chancery at the commencement of this term, by which it will appear that there is an increase of business more or less in all the Courts.

LORD CHANCELLOR.

*Judgments.*—8 appeals; 1 exceptions; 3 causes; 2 V. C.:—total 14.

*Pleas and Demurrers.*—4 pleas; 8 demurrers:—total 12.

*Re-hearings and Appeals.*—Appeals 28.

*Summary.*—14 judgments; 12 pleas and demurrers; 28 appeals..... 54

Add causes, exceptions, &c. set down before the Vice Chancellor, but ordered to be heard before the Lord Chancellor .... 32

Deduct abated and standing over ..... 13

Total in last term ..... 73

Increase ..... 1

ROLLS.

*Judgments.*—4 causes; 1 rehearing; 1 motion:—total 6.

*Demurrers.* 1.

*Causes.*—145 old; 30 new:—total 175.

*Further Directions and Costs.* 63.

*Exceptions.*—Exceptions and Further Directions and Costs, &c. 27.

*Summary.*—6 judgments; 1 demurrer; 175 causes; 63 further directions; 27 exceptions; total ..... 272

Deduct causes, &c. standing over..... 10

262

Total last term ..... 249

Increase ..... 13

VICE CHANCELLOR.

*Causes.*—426 old; 58 new:—total 484.

*Further Directions, &c.*—Further directions and costs, and further directions and petitions (92 old, 1 new):—total 93.

*Exceptions, &c.*—Exceptions and further directions, and exceptions and costs, 52.

*Summary.*—484 causes; 93 further directions, &c.; 52 exceptions ..... 629

Deduct abated causes, exceptions .. 77

Do. standing over ..... 22

— 99

530

Total last Term ..... 472

Increase ..... 58

General Summary.

Lord Chancellor ..... 73

Rolls ..... 262

Vice Chancellor ..... 530

865

Total last Term ..... 793

Increase ..... 72

PRACTICAL POINTS OF GENERAL INTEREST.

CHALLENGING A JUROR.

ANY degree, even the smallest, of interest in the question depending, is a decisive objection to a witness, and much more to a juror, or to the officer by whom the jury is returned. *Hesketh v. Braddock*, 3 Burr. 1847. But it is not competent to ask jurymen if they have not previously to the trial expressed opinions hostile to the defendants. *Re v. Edmonds*, 4 B. & Ald. 471. It is however a good cause of challenge to a juror that he has been a juror before in the same cause. *Argent v. Darrell*, Salk. 648; and by the following case it was held that it is a good cause of challenge if a juror has been on the grand jury who found the bill; but if this objection be not taken by way of challenge, it cannot subsequently be rendered available.

On the trial of an indictment against the defendants for a conspiracy, before Lord

\* After the publication of the printed list of last Term, two causes were added, and two have since been heard: the number therefore remains the same in that branch of business.



*Denman*, C. J., and a special jury, at the Westminster sittings after Trinity Term 1837, one of the jury rose, after the opening address of the prosecutor's counsel, and stated that it had just been brought to his recollection, that he had sat on the grand jury who found the bill. It was then proposed, on the part of the prosecution, that he should leave the box; but an objection to this course was made on behalf of the defendants, and the trial proceeded. The defendants were found guilty. Lord *Denman*, C. J.—The subject is certainly of great importance, and ought to be considered. At present my opinion is, that the objection should have been made the subject of challenge to the juror. If he had disclosed the objection before he was sworn, he might have left the box. *Cur. adv. vult.* Lord *Denman*, C. J., now gave judgment. In this case the juror objected to was not challenged, and when it was proposed that he should leave the box, the defendants refused their assent, and preferred to rely on their strict right. Under these circumstances, we think there should be no rule. Rule refused.—*Reg. v. Sullivan*, 1 Perry & Dav. 96.

#### PRACTICE UNDER THE ARREST ABOLITION ACT.

We have collected a few points of information on the practice established by the judges under the 1 & 2 Vict. c. 110, and subjoin them for the information of our readers, and shall be glad to receive a statement of any further points arising on the construction of the act.

1. It was at first doubted whether a *capias*, issued on a judge's order to arrest the defendant, was not a sufficient commencement of the action, and that a writ of summons was unnecessary; but it has been decided that a writ of summons must be issued.

2. It has also been decided that the *affidavit* to hold to bail need not be entitled in the cause, but in the Court only, in the manner in which affidavits of debt used to be entitled.

3. It has been further held that the 1 & 2 Vict. c. 110, repeals the statute under which no person could be arrested in a county palatine for a debt under 50*l.*; and that a judge may make an order to hold to bail under the 3d section of the new act, in counties palatine, for the same amount as in other counties, subject to the provisions of the 21st section.

4. Under the 6th section the judge may direct such costs to be paid as he deems fit.

#### NEW BILLS IN PARLIAMENT.

##### SHERIFFS' EXPENCES.

THIS is a Bill to regulate the expences to be incurred by persons serving the office of High Sheriff in England and Wales. The proposed enactments are—

1. That no high sheriff shall be required by virtue of his office to give to any judge or judges of assize or their officers, or to any grand jurors, governors or keepers of gaols or houses of correction, or any other person, any fee, gratuity, allowance or present.

2. That the sheriff in each county of England and Wales shall provide, during the continuance of the assizes, and on other occasions on which heretofore such officers have been employed, a certain number of javelin-men and trumpeters, on no occasion to exceed the number of twenty-two and two trumpeters, or to be a less number than ten and one trumpeter; all of which javelin-men and trumpeters are to be equipped, paid, supported and clothed by the clerk of the peace, at the expense of the county; and the justices assembled at quarter sessions shall, for the discharge of all reasonable expenses incurred in the payment, support, clothing and equipment of such javelin-men and trumpeters, make an order for the amount on the treasurer of the county, who is hereby required to pay the same out of any public money which shall be in his hands.

3. That lodgings for the judges of assize shall be provided at the expense of the county: Provided always, that the allowance heretofore made by the Exchequer to high sheriffs for the expense of such lodgings shall hereafter be paid to the treasurer of the county out of the fines and other monies paid by the high sheriff of the said county into the Exchequer; and the Commissioners of her Majesty's Treasury, are hereby authorized to issue their warrant for the payment of the same accordingly.

4. That no sheriff shall be required to proceed from or leave the town in which the assize is to be held, for the purpose of meeting the judge or judges of assize; but the said sheriff of each respective county, shall and is hereby directed to meet the judge or judges of assize, at the lodgings, or town or county house, as the case may be, provided for the said judge or judges in the town in which the assizes are to be held.

5. That nothing in this act contained shall be taken to relate to any rights, customs or usages of the county of Westmorland, or the counties palatine of Chester, Lancaster and Durham, or to any rights, usages or customs of the city of London, or of either of the Universities of Oxford and Cambridge; but that all rights, customs, usages and privileges of the counties aforesaid, and all rights, customs, usages and privileges of the city of London, and of the two Universities aforesaid, shall remain in as full force and effect as if this act had not passed.

## GRIEVANCES OF THE PROFESSION.

### NON-ATTENDANCE OF COUNSEL.—RETAINERS. —ARREARS OF FEES.

To the Editor of the *Legal Observer*.

Sir,

At this time, when the public mind is so much occupied with the consideration of abuses existing in the profession, I am much surprised at the very little attention given to some of the rules of the Bar.

First and foremost in the list is the practice of accepting briefs in several Courts sitting simultaneously, with hardly a chance of being able to discharge the duties for which the fees are paid. Scarce a day passes in which some unfortunate suitor is not grievously wronged by the absence or neglect of his leading counsel, to whom he has paid fees—not only of retainer but with his brief, on an implied assurance that the assistance and services of such counsel will be secured to him against the world. The unfortunate suitor, however, when his cause is called on, finds to his dismay that his leading counsel is pleading for another party in another Court—that he is to be ruined without a remedy.

Another abuse, to which I have only time now to allude is, “*the Practice of Retainers.*” The degree of injury which this practice inflicts on clients is incalculable. A solicitor employs Mr. A. as leader in a most important cause, in which his client has all the merits. He explains cautiously but clearly in full confidence, all the circumstances of the case, but especially, that there is one weak point not affecting its merits, which, if known to his opponent or his counsel, would be fatal. The cause lasts many years, comes before the Court in its several stages, in each of which a new fee is invariably paid to counsel, and the weak point remaining unknown to the other side, the suit is brought to a successful termination.

In a few days, however, the defendant gives notice of *appeal*, and at the same time sends a retainer to Mr. A. for himself, and upon this retainer so given, Mr. A. abandons his old client and all his interests, and deserts with all his arms and ammunition into the enemy’s camp, where, I apprehend he is bound in virtue of his new retainer, “to give to his new friends all the resources of his mind, all the knowledge he has of the case, *however obtained*, without any reservation or limit.” Indeed, to pretend that a counsel having knowledge of his opponent’s case, can argue as if he had none, would be to propound an absurdity not worth refutation. This state of things is not denied, nay, it is defended and justified, on the ground that the first solicitor who retained the counsel’s services, omitted to give him a retainer. But, sir, is this rule known to all solicitors, young and old? Are these rules any where published? Solicitors themselves are not, I hope, disposed, and if they were, are not permitted (*Cholmondeley v. Clinton*) to become deserters, and to betray secrets communicated to them by one client in confidence,

under any circumstances: why, then, should counsel be permitted or forced to discard all those obligations, which, in all other bodies of men, are held to be inviolable?

I am now about to reverse the case under consideration.—Great complaint has been frequently made of the rules of the Bar; but let us look at the other side, and see if they have no cause of dissatisfaction with their clients. There is a practice prevailing against them with the lower class of attorneys, calling not only for the loudest reprobation, but for some interference of the Law Society. I allude to the manner in which counsel are kept out or defrauded of their fees. The system of withholding them long after they ought to be paid, is bad enough; but there is one infinitely more disgraceful, and indeed actually fraudulent. It is well known that there is a set of practitioners who employ in their suits junior counsel, perhaps very recently called to the bar; and to them they send their pleadings (without ever thinking of paying the fees) until the clerk gives in an account—or indeed as long as the counsel will continue to draw the pleadings without payment. On his declining to take in any more, the disreputable practitioner goes to another counsel, treats him in the same manner, and as there is always a succession of young barristers who cannot know these men or their characters, and who are ready to do business for the sake of practice: so, these degraded solicitors go on, year after year, sending them papers, charging fees which they never pay, and defrauding those who have no redress. From what I have learned on the subject, this is reduced to a system; and if the Law Society should think it right to interfere in any manner to obtain some mitigation of the rules laid down by the Bar, I should be truly glad if they would adopt or suggest some plans by which counsel may be protected from the fraudulent practices of which they have so long been the victims.

I will venture to suggest one mode by which this scandal can be removed by the Society, viz., by their publishing a recommendation that the name of the offenders should be transmitted to the Secretary, with a view to their being shewn to the profession at large, and through them to the counsel.

A SOLICITOR.

## ON THE MODE OF EXAMINING ARTICLED CLERKS.

Mr. Editor,

I AM sure you will be ready to adopt as the motto of your Journal the maxim—“*Audi alteram partem.*”—This observation is intended to introduce to your notice a few remarks I cannot but make upon the character of the last Examination of Candidates at the Law Institution. You very truly state that the questions are more difficult than those of the previous examination; they are indeed!—and

if future examinations are to increase in the same grade of abstruseness and difficulty, I do not hesitate to say that such an ordeal will be an immense injustice to the public, and it will become a serious question whether the profession of the law is to be monopolized by gentlemen having sharp wits and quick memories.

In fairness and candour, it must be admitted that this examination did not emanate directly from the Judges of the land, but from the above Society, who, doubtlessly actuated by the best of motives, in instituting such a test, may yet strain the bow too tightly, and work an unjust restraint, contrary to all principles of public policy. For while I see others (though with stars before their names) who occasionally indulge in somewhat sharp practice, I cannot consider this Institution such absolute perfection as to vest it with a despotic authority over the destinies of young men, who, having paid largely to the government, and to members of the profession for leave to enter it, have yet to pass through this arbitrary ordeal before their course is clear.

Upon abstruse and difficult questions judges doubt and judges differ; may I venture respectfully to ask if the learned Examiners have all agreed upon the law—as to the difficult points with which they are probing the youthful tyro before they sit in awful conclave upon him?

How do judges solve their doubts and reconcile their differences upon points of law? The daily practice of the great Lord Eldon is the best answer to the question. "He would take the papers home, read, and give them due consideration, and *after consulting all the authorities*, would give his judgment." But the candidate for examination is denied the privilege asked and exercised by one of the greatest Equity lawyers of the age; and although his books are to him as essential working implements of business as the instruments of a surgeon; and it is as reasonable to require the one to answer a difficult question of law without his books, as it is to ask the other to amputate a limb without his instruments—yet such now appears to be the growing practice at the Law Institution, thereby illustrating the proposition with which I started, namely, that *memory* and not *learning*, is the test of fitness of candidates for practising the profession of the law.

CIVIS.

[We think that there need not be any apprehension that the Examiners will abuse their powers. We have heard that the Questions were, as to a large part of them, deemed by some persons as too easy, and when it appears that many of the candidates answer the Questions satisfactorily in two or three hours, and that few only are found wanting—a proportion of four or five per cent. only—we cannot think there is any cause for alarm. We have, however, inserted the letter of our Correspondent (who we believe to be an able and respectable practitioner), but we think too much has been said of the powers of the members of the Law

Society; for they are presided over at these examinations by one of the Masters, who attend in succession from the several Courts, and who are, of course, in direct communication with the Judges, and would restrain any undue severity.—Ed.]

## BARRISTERS CALLED,

*Easter Term, 1839.*

### LINCOLN'S INN.

Sir Archer Denman Croft, Bart.  
Peregrine Dealtry.  
William John Phelps.  
Alexander Mc Neill.  
William Rose.  
Charles John Coote.  
The Hon. Henry Boyle Bernard.  
John Beames, jun.  
Frederick Fraser Carruthers.  
Henry Matthias Riddell.  
Thomas Carter Briggs.  
Richard Baxter.  
William Boteler.  
Thomas Bates.  
Francis Fisher.  
William Vizard, jun.  
Samuel Sampson.  
Edward Howes.  
Thomas Henry Allen Poynder.  
William John Johnson.  
Frederick Jones.

### INNER TEMPLE.

John Hughes.  
William John Hamilton.  
Arthur Edward Somerset.  
Thomas Emerson Headlam.  
John Richard Westgarth Hale.  
Richard Griffiths Welford.  
Frederic Hitchcock.  
James Hill.  
George Hart Morley.  
Richard Arabin.  
Edward Fitz Roy Talbot.  
Kenneth Macaulay.  
Sydney Smith Bell.

### MIDDLE TEMPLE.

John Murray.  
Francis Henry Riddell.  
Stewart Macnaghten.  
Martin Archer Shée.  
Cateret John William Ellis.  
Henry Reeve.  
William Clifford.  
Robert Farie.  
George Robinson.  
Gillery Pigott.  
Paul Wilmot.  
John Price Williams.  
Henry Cory.

### GRAY'S INN.

John Richard Coul.  
Thomas Teed.  
John Walter Huddleston.

## SUPERIOR COURTS.

## Lord Chancellor's Court.

## BANKRUPTCY.—APPEAL.

*A. being declared a bankrupt, petitioned the Court of Review, and obtained a reversal of the adjudication. B., the petitioning creditor, applied to that Court for a special case, for the purpose of appealing to the Lord Chancellor. The Court offered him such a case as he conceived did not raise the question, and he refused it, and presented a petition of appeal without a special case: Held, that grounds were not laid for hearing the appeal otherwise than by special case; that the settling of a case was no ground for such appeal, and that it was not expedient to lay down any rule as to the circumstances on which the Lord Chancellor would hear an appeal, except by special case.*

Mr. George Hall, late a director and public officer of the Northern and Central Bank of England, was declared a bankrupt by commissioners in Manchester, on the first of November, 1838, under a fiat of bankruptcy sued out by the present public officer of the said bank. On the 6th of the said month the bankrupt presented a petition to the Court of Review, praying that the fiat might be declared invalid, and be superseded. The Chief Judge of that Court, after hearing counsel for and against the petition, on the 26th of November declared that he was of opinion that the fiat was valid. Sir John Cross, another judge of that Court, was of opinion that it was not valid, and that it ought to be set aside on equitable grounds. Sir George Rose, the third judge, agreed with the Chief Judge that the fiat was valid, but thought, with Sir John Cross, that it ought to be set aside. The fiat was accordingly ordered to be set aside, and Mr. Stubbs, the public officer of the said bank, and petitioning creditor, was ordered to pay the costs. Stubbs then drew up a special case, with a view to appeal to the Lord Chancellor, according to the provisions of the act 1 & 2 W. 4, c. 56, s. 3, and tendered it to one of the judges of the Court for his approbation. The judge refused to sign the case, but he drew up a case himself, which Stubbs refused to take, because it omitted to state an indenture executed by Hall, and important to be stated on the question, whether an act of bankruptcy was committed; and it also omitted to state a debt of 4,787l., and was inaccurate in respect of other facts which were before the Court of Review, and did not raise the proper question for the decision of the appeal Court. Stubbs then presented a petition to the Lord Chancellor, stating, among other things, the above matters, and that he was without any means of appealing from the order of the Court of Review, declaring that the fiat should be set aside, unless his Lordship should be pleased to hear such appeal without special case; and that his Lordship had, in pursuance of the order of

the Court of Review, made an order on the 29th of November, 1838, annulling the fiat. The petitioner submitted that his Lordship had original jurisdiction to hear and decide the matter of the petition, and to order the said fiat to be proceeded with; and he prayed that the said order annulling the fiat might be discharged, and a writ of *procedendo* be issued to the country commissioners.

Mr. Swanston, Mr. Wightman, and Mr. Bacon were heard in support of this petition on the 12th of January last. They contended that on the true construction of the 12th, 17th, 18th, and 19th sections of the Bankruptcy Court Act, the Court of Review had no authority to entertain a petition to annul or set aside a fiat. The act reserved that jurisdiction to the Lord Chancellor. On this point they cited *Ex parte Hinton, in re Parker*,<sup>a</sup> *Ex parte Keyes, in re Terry*,<sup>b</sup> and on these authorities they contended that the Court of Review were bound to sign the case presented to that court. They further submitted, that the Lord Chancellor had original jurisdiction to hear this petition of appeal without a special case: that jurisdiction was not taken away by the third section of the act 1 & 2 W. 4, c. 56; and on that point also they cited *Ex parte Keyes*. There was such a mixture of law and facts in this case, that the Lord Chancellor would think it right to hear it otherwise than by a case, especially as a case was refused by the Court of Review.

Mr. Wigram, Mr. Anderdon, and Mr. Geldart for Hall, opposed the petition, and said there were no special circumstances in this case to justify a departure from that form of appeal given by the act of parliament. They relied on the authority of the cases, *In re Maberly*,<sup>c</sup> in which Lord Chief Commissioner Pepps refused to hear an appeal from the Court of Review, upon petition and without a special case, observing that the blending of law and facts was not sufficient ground for this Court to dispense with a special case. They cited to the same effect *Ex parte Britten*,<sup>d</sup> and *In re Butterworth*.<sup>e</sup>

The petition having stood over for judgment,

The Lord Chancellor now stated the various proceedings as before stated, and said that the point for his consideration arose on the 3d, 17th, and 19th sections of the act of 1 & 2 W. 4, c. 56, and their provisions appeared to him to be conclusive against his jurisdiction, except by special case. The 17th section directed the mode of proceeding in case the bankrupt should be minded to dispute the adjudication of the commissioners. Upon his petition presented to the Court of Review for that purpose that Court may decide on the adjudication, or may direct an issue to a jury to try any matter of fact affecting the validity of the adjudication, and the verdict so found, unless set aside on the decision of the Court on the petition, was to be conclusive, subject

<sup>a</sup> 1 Dea. & Ch. 407. <sup>b</sup> 1 Mont. & A. 226.

<sup>c</sup> 2 Mont. and Ayr. 636. <sup>d</sup> Ib. 637.

<sup>e</sup> Ib. 638.

to an appeal to the Lord Chancellor "upon matter of law or equity, or on the refusal or admission of evidence only." The 3d section provided that "in all cases of appeal to the Lord Chancellor by virtue of this act such appeal shall be on special case, and in no other mode whatsoever, except the Lord Chancellor shall in any case otherwise direct, which special case shall be approved and certified by one of the Judges of the said Court of Review," &c. His Lordship did not see in this case any ground for departing from the mode of appeal prescribed by that clause. The Court of Review was bound to certify a case, and a case was certified, but the petitioner objected to it. The settling of the case was not subject to appeal. It was argued that this Court had still its original jurisdiction in respect to the issuing or annulling of *fiats*, under the 18th and 19th sections. It was evident, on reading these sections, that the jurisdiction there given was on appeal, and not an original jurisdiction. The 12th section was that which continued to the Lord Chancellor the power of issuing *fiats* instead of commissions: the 19th gave him power to rescind, but it was on appeal. It was a well-known fact, that petitions to rescind commissions of bankruptcy formerly constituted a great deal of the business of this Court, to the postponement of the other suitors: it was not therefore to be supposed that the legislature, in appointing a new tribunal for the avowed purpose of relieving this Court from matters in bankruptcy, would reserve to it all its former power over commissions? The formal order to rescind the *fiat* in pursuance of the order of the Court of Review declaring a *fiat* invalid, belonged still exclusively to this Court; but why that was so he could not say, unless it had perhaps been considered beneath the dignity of this Court that its *fiats* should be rescinded by an inferior Court. He was of opinion that no ground was shewn to hear an appeal in this case, otherwise than by special case. Under what circumstances it would be proper to hear an appeal otherwise he would not attempt to state: it was not expedient to lay down any rule, as Lord Brougham said in *Ex parte Keyes, in the matter of Terry*.<sup>1</sup> No sufficient grounds were shewn to induce him to hear this appeal except on special case, and the petition must be dismissed.

*Ex parte Stubbs, in the matter of Hall.*—January 12th, and April 10th, 1839.

#### Queen's Bench.

[Before the Four Judges.]

DEPUTY-CLERKS OF THE PEACE.—ATTORNEY.  
—PLEADING.

*In an action of debt on a penal statute, a plea of Not Guilty puts in issue the whole of the facts necessary to make the penalty attach. Such a case is not affected by the new rules.*

*In an action of debt on the 22 G. 2, c. 46,*

*against a party for practising as an attorney at sessions where he holds the office of deputy clerk of the peace, he must be distinctly proved to have been appointed to the office, and to have acted in it. The fact of his appearing to act as the general deputy of a principal, who is both town clerk and clerk of the peace, will not be sufficient to subject him to the penalty.*

This was an action brought on the statute 22 G. 2, c. 46, s. 16, (by which it is provided, "And to the end that justice may be impartially administered in the several general or quarter sessions of this kingdom," be it further enacted by the authority aforesaid, that no clerk of the peace or his deputy, nor any under-sheriff or his deputy, shall from and after the said twenty-ninth day of September, act as a solicitor, attorney, or agent, to<sup>a</sup> sue out any process at any general or quarter sessions of the peace to be held for such county, riding, division, city, town corporate or other place within this kingdom, where he shall execute the office of clerk of the peace, or deputy clerk of the peace, under-sheriff or deputy, on any pretence whatsoever; but if any clerk of the peace, or his deputy, or any under-sheriff, or his deputy, shall presume to act as a solicitor, attorney, or agent as aforesaid, such clerk of the peace, or his deputy, under-sheriff or his deputy respectively, shall be subject and liable to a like penalty of fifty pounds, to be recovered in manner aforesaid"), to recover several penalties of 50*l*. The declaration alleged that one Charles Pestell Harris, before the committing of the grievances by the defendant, was clerk of the peace for the town of Cambridge, and that the defendant was the deputy of the said Harris, so being such clerk of the peace. It then stated that the defendant, so being such deputy, on the 30th of June, 1834, at the general quarter sessions of the peace holden at Cambridge, in and for that town, being the town where the defendant executed his office of such deputy, he acted and presumed to act as an attorney for one James Davey, by managing and conducting a certain indictment for felony at such sessions.

There were several other counts for acting as an attorney in different cases at other sessions for the same town.

The defendant pleaded Not Guilty.

At the trial of the cause before Mr. Justice Park, at the Cambridgeshire Spring Assizes, 1837, Mr. Gunning, the town clerk for the borough of Cambridge, produced the books of the corporation. It appeared by them that in the year 1740, one Thomas York was elected town clerk: there was no separate appointment to the office of clerk of the peace, but the town clerk presided at the town sessions in that character, and signed the indictments as "clerk of the peace." The appointments of several other persons to the office of

<sup>a</sup> This word to ought to be *or*, and is so in the parliamentary roll. Per *Patterson, J.*, and Mr. Gunning, in *Fulkner v. Checell*, 2 Harr. & Woll. 183; 5 Ad. & Ell. 213.

<sup>1</sup> 1 Mont. & Ayr. 226.

town clerk were also put in, and it was shewn that the persons so appointed always executed the office of clerk of the peace also, and signed the indictments, extracts, &c. as "clerk of the peace." In the 7th G. 4, an act of parliament was passed for the purpose of authorizing the building of a new gaol for the borough of Cambridge. By the 2d section of that statute, it was provided that the site of the intended new gaol should be conveyed to the "clerk of the peace."

In conformity with the provisions of this stat. the freeholder conveyed the site of the new gaol to Geo. Busby White, who was at the time town clerk of the borough, under an appointment precisely similar to that under which Harris held the office, as hereinafter set out. White had no separate appointment to the office of clerk of the peace. In the conveyance thus made in execution of the provisions of the act, to which he was described as "Clerk of the peace for the boro' of Cambridge:" and White, in executing the deed, signed his name thus—"Geo. B. White, Town Clerk."

For the purpose of further shewing that the office of clerk of the peace was incident and annexed to that of town clerk, it was shewn that Harris, upon being removed in Jan. 1836, from his situation of town-clerk, by the town council, under the provisions of the act for regulating Municipal Corporations, immediately handed over to his successor in that office, Mr. Gunning, all the books, &c. relating to the clerkship of the peace. Amongst the documents so handed over were the engrossed indictments against the prisoners to be tried at the then ensuing sessions for the town. These had been drawn by Harris, who, at the foot of them had added (as usual,) "clerk of the peace," leaving a blank for the name of the person who should hold that office at the time of the sessions. Gunning, who had no separate appointment as clerk of the peace, filled up the blank with his own name, and continued to act as clerk of the peace, until the following month of August. At that time the crown had granted to the corporation the power of holding quarter sessions for the borough, under the provisions of the Municipal Corporations Act, which provided that after such grant the office of clerk of the peace should in no borough be held by the town clerk. One Ashton, was accordingly appointed to that office, Gunning continuing to be town clerk.

Having thus given evidence for the purpose of shewing that the office of clerk of the peace for this borough was incident to that of town clerk, and that the person holding the latter was *ipso facto* entitled to the former office, the plaintiff proved and put in the appointment of Harris to the situation of town clerk, and of the defendant to be his deputy. The former was as follows :—

"Know all men, that we the mayor, bailiffs, and burgesses of the boro' of Camb. have constituted, nominated and appointed, and by these presents do constitute, nominate

and appoint, Charles Pestell Harris, of the said boro.' to be *town clerk* of the said boro.' to have, use, exercise and enjoy the said office of town clerk of the said boro.' to him, by himself or his sufficient deputy, henceforth during so long as he the said C. P. Harris, shall demean himself correctly and properly, and to the satisfaction of the said mayor, bailiffs, and burgesses, in the said office of town clerk, and in the execution and performance of the duties thereof, and incident thereto : together with all fees, wages, rewards, salaries, allowances, profits, commodities, and advantages whatsoever to the said office by any means due, accustomed, payable, or belonging, in as ample and beneficial a manner as any other person or persons heretofore holding and using the said office held and enjoyed the same."

This was dated in 1833, and was under the seal of the corporation.

The deed appointing the defendant his deputy, after reciting the above deed, proceeded thus :—"I do nominate &c. A. Chevell, of, &c., to be my deputy in the said office of town clerk of the said borough ; to have, hold, use, exercise, and enjoy the said office of deputy town clerk of the said borough, to him the said A. Chevell, henceforth, for and during such time and term as I now hold and enjoy the office of town clerk, provided he shall so long and during that period demean and conduct himself correctly and properly, and to the satisfaction of the said mayor, bailiffs, and burgesses, in the said office of deputy town clerk ; and in the execution and performance of the duties thereof, and incident thereto."

This deed was signed and sealed by Harris, and was also under the seal of the corporation.

Evidence was then given that the defendant after this appointment, practised as an attorney on several occasions at the sessions for the borough of Cambridge, as stated in the declaration.

On the part of the defendant, evidence was given to shew that Harris acted as the clerk of the peace at the sessions, and that the defendant confined his practice and attendances on the corporation, and other duties more immediately connected with the situation of town clerk, and on no occasion acted as clerk of the peace.

The defendant also put in an appointment by the Duke of Rutland, who was *custos rotulorum* for the borough, in the following words :—

"Whereas the office of clerk of the peace for the borough of Cambridge is now void,—know all men, &c., that I, J. H., Duke of Rutland, *custos rotulorum* of the said borough, do hereby, as far as I lawfully can, nominate, elect, appoint, and assign, and give and grant unto Charles Pestell Harris, an able and sufficient person, instructed and learned in the law, to be clerk of the peace for the said borough, and the precincts thereof ; to hold and exercise the said office by himself or his sufficient deputy, &c."

This was dated 19th May 1830, but the office was not then vacant, Geo. B. White, the town

clerk, not being removed from his office till the 30th of the same month. The records of the corporation were searched, but no other appointment than the above had ever been made by the *custos rotulorum* or any other person, to the office of clerk of the peace. The only question left by the learned judge to the jury was whether the defendant had, in point of fact, ever acted as clerk of the peace: the jury found that he had not; whereupon his lordship nonsuited the plaintiff, but reserved leave for him to move to enter a verdict for such penalties<sup>b</sup> as the Court should direct, if they should be of opinion that the defendant had by his plea admitted that he was deputy clerk of the peace, or if upon the whole evidence, they should think he was entitled to recover. Accordingly, in Easter Term 1837, a rule having been obtained,—

Mr. Biggs Andrews, and Mr. Byles, shewed cause. It must be taken now that the plea of the general issue in an action of debt upon a penal statute, puts the whole matter on which the question of liability depends, in issue. When this case was before the Court on a former occasion,<sup>c</sup> it was doubtful whether the general issue was sufficient for that purpose, but that point has since been decided in two cases in the Exchequer.<sup>d</sup> The facts therefore being put in issue by the pleadings, the question now to be decided is, whether the defendant was a deputy clerk of the peace, and while he was so, acted as an attorney at the sessions where he held that office. It is clear that he did not fill that office. There was no appointment of the defendant to be deputy clerk of the peace, and his appointment as deputy town clerk does not prevent him from acting at the sessions. The two appointments are made by different persons. The *custos rotulorum* of the borough appoints the clerk of the peace, the magistrates of the borough appoint the town clerk of the borough. The appointment to one office and acting under that appointment will not suffice to make him liable as for acting in another and an independent office. In order to make a person liable under this statute, two things are necessary:—first, that he should have been appointed to the office; and secondly, that he should execute the office while holding such appointment. In this case there has been no appointment of the defendant to the office of deputy clerk of the peace, and he has not been proved to have acted in such office. The acts of Harris in that office, Harris being his prin-

cipal with respect to another office, cannot fix him with liability in the case.

Mr. Kelly, and Mr. Gunning, in support of the rule.—After the cases referred to in the Exchequer, it will be impossible to contend that the plea of not guilty, in a penal action, does not put all the facts constituting the offence in issue. The defendant is within the mischief, and therefore within the provisions of the statute. He was appointed generally the deputy of Harris, and he acted as the general deputy of Harris, who was clerk of the peace, as town clerk. He need not be proved to be directly acting in the office of clerk of the peace. If he appears to the world to be acting in that character, and at the same time practises at the sessions, where he assumes the character of deputy clerk of the peace, he is liable to this action. The two offices of town clerk and clerk of the peace had long been united in the same person. It might be considered that one office was incident to the other. *Parker v. Kett*,<sup>e</sup> shews that it is essential to a deputy to have the whole power of his principal, and a covenant to restrain it is therefore void. He need not be proved to have acted directly in the execution of the office, *Stanley v. Dodd*.<sup>f</sup> The law will not allow any tampering with the office, the great object of the law being to keep pure and unsuspected the administration of justice. In *Hughes v. Statham*,<sup>g</sup> that principle was acted on. There an attorney who was town clerk and clerk of the peace for the borough of L., upon the dissolution of a partnership which had existed between him and two other persons, entered into an agreement to pay to one of them (C. D.) a certain sum of money, and to use his endeavours to procure for him one-fourth of the prosecutions arising in the Town Clerk's Office. It was held, that the attorney could not legally enter into such an agreement, and though it was proved that there were prosecutions which went through the office from other than the borough sessions, the Court applied the agreement to all the prosecutions whatever, and therefore held it to be bad. The same principle must be acted on in this case, or else the statute may easily be evaded.

Lord Denman, C. J.—What has taken place appears to be quite correct, and the nonsuit must remain. The statute intended to prevent a person conducting on his own account, cases at those quarter sessions, where he might execute the office of clerk or deputy clerk of the peace. The defendant here is not shewn to have executed the office of deputy clerk of the peace, and this he must do in order to satisfy the words of the statute. It is true that the statute may be easily eluded by a juggle between the principal and deputy, but we cannot prevent that mischief by the introduction of words not in the statute. It is clear that as the statute now stands, the party must be the officer, and must execute the office. I do not admit the argument used by the counsel for

<sup>b</sup> The declaration sought to recover several penalties of the defendant for acting as attorney in separate and distinct matters at one and the same sessions. His counsel contended that he could only be liable to a single penalty for acting at one sessions, however many cases he might be concerned in. The learned judge reserved this point also, but it was not discussed.

<sup>c</sup> 2 Harr. & Woll. 183; 5 Add. & Ell. 213.

<sup>d</sup> *Earl Spencer v. Swinnell*, 3 Mee. & W. 154; and *Jones v. Williams*, 4 Mee. & W. 375.

<sup>e</sup> 1 Salk. 95; 1 Lord Raym. 658.

<sup>f</sup> 1 Dowl. & Ry. 397.

<sup>g</sup> 4 Barn. & Cres. 187

the defendant. Acting in the discharge of the duties of an office may prove the possession of that office; but it is possible to put a case the opposite of what is supposed. A person appointed may not have executed the office, and yet, on the construction contended for, he may be exposed to penalties without having acted in opposition to the provisions of the statute.

Mr. Justice *Littledale*.—The defendant here cannot be considered as filling the office of deputy clerk of the peace. He was appointed deputy town clerk, but that does not necessarily confer on him the other office.

Mr. Justice *Patteson*.—I am of the same opinion. The fact that the principal here held both offices, and that this defendant was his deputy in one of them, does not shew that he was deputy in the other. There is a difference between this statute and that of the 55 G. 3, where the words are for such time as he shall hold such appointment; not such time as he shall execute the duties of the office. The latter is the expression used in the present statute.

Mr. Justice *Coleridge*.—In this case it is necessary to prove that the defendant not only held the office, but that he acted in it. Now assuming, which I do not admit to be the fact, that he held the office, there is no proof that he acted in it. An acting in the office by his principal, to whom he was deputy in respect of another office, will not make him liable. If it is true that the act of the deputy is the act of the principal, it is not true that the act of the principal is the act of the deputy. On the contrary, the act of the principal rather excludes that of the deputy. The nonsuit was right.

Rule discharged.—*Faulkner v. Chevell*, E. T. 1839. Q. B. F. J.

### Common Pleas.

#### AWARD.—MATTER IN DIFFERENCE.

*Where the plaintiff sued the defendant for a sum actually due, and the latter pleaded a set-off in reference to a claim subsequently accruing, and an order of reference was made four days before the sum mentioned in the set-off became payable, "of all matters in difference between the parties, including the claim of the defendant in the set-off," and the arbitrator awarded that the amount of the set-off was not due at the time of the commencement of the action, but that it had since become payable, and ordered it to be paid: Held, that the award was good.*

*Bingham* shewed cause against a rule obtained by *Wilde*, Serjt., for setting aside so much of the award made in this case as found 129*l.* 6*s.* 9*d.* to be due from the plaintiff to the defendant on the 1st August 1838, and directed that sum to be paid, on the ground that the arbitrator in making that award had exceeded his authority. It appeared that in 1838, the plaintiff and defendant entered into a written agreement, by which the defendant hired a house of the plaintiff from Lady-day in that year to rent at 60 guineas per annum, and the

plaintiff agreed to pay to the defendant a sum of 20 guineas per annum for the board of each of a certain number of young ladies, who formed a school transferred from the plaintiff to the defendant, the payment to be made in four instalments, the first of which should become due on the 1st August 1838. On the 27th June 1838, three days after the first quarter's rent became due, the plaintiff commenced an action for 15 guineas, the amount of rent, and also an action of slander; and it was eventually agreed that the two actions should be referred to the decision of an arbitrator. The defendant had pleaded to the first action alleging the 129*l.* 6*s.* 9*d.* to be due, as a set-off to the rent, and the terms in which the order of reference was drawn up was that "all matters in difference between the parties, including the claim of the defendant in the set-off in the first action," should be considered. The arbitrator found that the rent was due to the plaintiff, and that the 129*l.* 6*s.* 9*d.* was not due at the commencement of the action; and as to the action for slander, that there was no cause of action; but he also found (his award being made in the month of November) that on the 1st August the sum of 129*l.* 6*s.* 9*d.* had become due, and he directed the payment of that sum. It was now submitted that the only question which could arise was whether it was the intention of the parties that the terms of the order of reference should include the amount due on the 1st of Aug. The sum was earned, morally speaking, at Midsummer, although by the special terms of the agreement it did not become payable until the 1st August, and therefore a person not legally skilled might easily suppose it to be a fair ground of set-off. The matters in difference, however, included all claims, even though they were not supported by legal right, and although it must be admitted that the sum claimed was not due at the time of the commencement of the action, yet that sum must be taken to be a matter in difference at the time of the reference. At all events the intention of the parties must be taken to be to refer the defendant's claim; for, independently of the terms of the order, it was exceedingly improbable that the defendant would have submitted to the reference of the matters in difference on the 27th July, if it did not include a claim which she possessed against the plaintiff in respect of a sum of money which would absolutely become due on the 1st August.

*Wilde*, Serjt., in support of the rule.—It was not disputed that this claim was a matter in difference at the time of the reference to arbitration; but the only question was, whether it was matter of set-off. The set-off was pleaded as having accrued at the time of the commencement of the action, and that was the question which the arbitrator had to try. His award was inconsistent, because he found that the set-off was not due, and yet he ordered the amount of it to be paid. The only effect of the rule would be to decide whether the parties should have the remedy by attachment or not.



*Tinda', C. J.*—This is clearly a question as to the intention of the parties. Now what was their real intention? If the words are such as to shew that it was to send all matters in difference existing between them to the arbitrator for decision, he was quite right in taking this claim of the defendant in the first action into consideration. If the object of the parties were only to know whether the set-off was due or not, there would be no necessity for the words which are introduced in the order of reference; the word "claim" must include something more particular. I think, therefore, that the arbitrator had authority on an express reservation, not only in the action as to the set-off, but as to the subject-matter of it also.

*Bosanquet, J.*—This case must be governed entirely on the construction to be put upon the words of the reference, from which the intention of the parties may be collected. It is not merely a reference of the set-off as pleaded, but it is a reference of the claim to a set-off, and it was for the arbitrator to decide upon the nature of that claim. It is very properly said, that the sum mentioned in the plea of set-off was not due at the commencement of the action, but then the arbitrator proceeds to consider the nature of the claim, and finding that it would become due on the 1st August, though it was not due so as to be a defence to the action, he finds that it was payable at the time of the award, and therefore he orders it to be paid.

*Coltman, J.*—I think that the arbitrator has taken a correct view of the matter, and that it must be taken that the parties meant that the arbitrator should have the power to award on the claim of the defendant.

*Erskine, J.*—I think that the words of the reference are quite wide enough to convey what appears to have been the intention of the parties.

Rule discharged.—*Petch v. Coulan*, E. T. 1839. C. P.

## NEW ORDERS IN CHANCERY.

9th May, 1839.

1. That in all cases in which it shall be alleged that the plaintiff is prosecuting the defendant, in this Court, and also in some other Court for the same matter, the defendant in eight days after filing his answer, or further answer to the plaintiff's bill, shall be entitled, as of course, on motion or petition, to the usual Order for the plaintiff to make his election in which Court he will proceed, with the usual directions in that behalf, unless the plaintiff shall, before the expiration of the same eight days, have delivered exceptions to the defendant's answer, or have referred his further answer on former exceptions. And in case the plaintiff shall have delivered such exceptions, or referred the defendant's further answer within such time, the defendant shall be at liberty, by notice in writing to

be served on the plaintiff's clerk in Court, to require the plaintiff to procure the Master's report on such exceptions, within four days from the service of such notice. And if the plaintiff, being so served with such notice, shall not procure the Master's report in four days accordingly, or if the exceptions shall not be allowed, the defendant shall then be entitled, as of course, on motion or petition, to the usual Order for the plaintiff to elect in which Court he will proceed, with the usual directions. But in either of such cases the plaintiff shall be at liberty to move that such Order may be discharged on the merits confessed in the answer.

2. That the plaintiff in any injunction cause having obtained the common injunction to stay proceedings at law, may (either before or after the answer of the defendant shall be put in, and whether such injunction shall or shall not have been continued to the hearing of the cause) obtain an Order, as of course, for leave to amend the bill without prejudice to the injunction, but that such Order shall contain an undertaking by the plaintiff to amend the bill within one week after the date of the Order, and in default thereof the Order shall become void. And that in case the bill shall be amended pursuant to such Order, the defendant shall thereupon, and although he may not have put in his answer to the bill or the amendments thereof, be at liberty to move the Court on notice, to dissolve the injunction, on the ground that the bill as amended does not, even if the amendments be true, entitle the plaintiff thereto.

3. That in case an injunction to stay proceedings at law shall be prayed for by the bill, and shall either not be obtained, or having been obtained, shall have been dissolved upon the merits stated in the answer, and the plaintiff shall afterwards amend his bill, and the defendant shall not plead, answer, or demur to the amended bill within eight days after appearance, the plaintiff shall be entitled to move for an injunction, upon affidavit of the truth of the amendments.

4. That foreclosure causes when ready for hearing, may be ordered to be advanced for hearing, under the same circumstances, and subject to the same rules as other causes may be ordered to be so advanced.

5. That in all cases in which it shall appear that certain preliminary accounts and inquiries must be taken and made before the rights and interests of the parties to the cause can be ascertained, or the questions therein arising can be determined, the plaintiff shall be at liberty, at any time after the

defendants shall have appeared to the bill, to move the Court on notice, that such inquiries and accounts shall be made and taken, and that an order referring it to the Master to make such inquiries, and take such accounts, shall thereupon be made, without prejudice to any question in the cause, if it shall appear to the Court that the same will be beneficial to such (if any) parties to the cause as may not be competent to consent thereto, and that the same is consented to by such (if any) of the defendants as being competent to consent have not put in their answer to the bill, and that the same is consented to by, or is proper to be made upon, the statements contained in the answers of, such (if any) of the defendants as have answered the bill.

6. That whenever any order of course obtained from the Master of the Rolls in any cause marked for or set down to be heard before the Lord Chancellor pursuant to the general order of the 5th day of May 1837, shall be alleged to have been irregularly obtained, any application to discharge the same for irregularity, shall in the first instance be made to the Master of the Rolls, and such cause and all other applications to be made therein, shall nevertheless continue subject to all the regulations of the said general order as if this order had not been made.

— 10th May, 1839.

1. That every person to whom in any cause or matter pending in this Court, any sum of money or any costs have been ordered to be paid, shall after the lapse of one month from the time when such order for payment was duly passed and entered, be entitled by his clerk in court to sue out one or more writ or writs of fieri facias or writ or writs of elegit of the form hereinafter stated, or as near thereto as the circumstances of the case may require.

2. That upon every such order hereinafter to be entered, the entering clerk of this court in whose division the same may be, shall at the request of the party leaving the same, mark the day of the month and year on which the same shall be so left for entry, and no writ of fieri facias or elegit shall be sued out upon any such order, unless the date of such entry shall be so marked thereon as aforesaid.

3. That such writs when sealed shall be delivered to the sheriff or other officer to whom the execution of the like writs issuing out of the Superior Courts of Common Law belongs, and shall be executed by such sheriff or other officer as nearly as may be

in the same manner in which he doth or ought to execute such like writs, and such writs, when returned by such sheriff or other officer, shall be delivered to the clerks in Court, by whom respectively they were sued out, or be left at their respective seats, and shall thereupon be filed as of record in the office of the Six Clerks of this Court. And that for the execution of such writs, such sheriff or other officer shall not take or be allowed any fees other than such as are or shall be from time to time allowed by lawful authority for the execution of the like writs issuing out of the Superior Courts of Common Law.

4. That if it shall appear upon the return of any such writ of fieri facias, as aforesaid, that the sheriff or other officer hath by virtue of such writ seized but not sold any goods of the person ordered to pay such sum of money or costs as aforesaid, the person to whom such sum of money or costs is payable, shall immediately after such writ with such return shall be filed as of record, be at liberty by his clerk in Court to sue out a writ of venditioni exponas, in the form hereinafter stated, or as near thereto as the circumstances of the case may require.

5. That on every such writ of fieri facias and elegit so to be issued as aforesaid, there shall be endorsed the words, "By the Court," and also thereunder the calling and place of residence of the party against whom such writ shall be issued, and also the name and residence or place of business of the solicitor at whose instance the same shall be issued, and the name of the clerk in Court issuing the same, and that every such writ be also endorsed for the sum to be levied according to the form used upon like writs issuing out of the Superior Courts of Common Law.

6. That for every such writ of fieri facias or venditioni exponas so to be issued as aforesaid, there shall be allowed to the clerk in Court issuing the same the sum of eighteen shillings and seven pence, and for every such writ of elegit the sum of one pound ten shillings, and that there be allowed to the solicitor at whose instance any such writ of fieri facias, elegit, or venditioni exponas, shall be issued, the sum of six shillings and eight pence for instructions for the said writ, and that there be also allowed to such solicitor the further sum of six shillings and eight pence for attending to procure a warrant, and for attending to instruct the officer charged with the execution of such writ.

[The Forms of the Writs will be given next week.]

## NEW TRIALS.

Doe *d.* Filmer, Bart. & anor.  
*v.* Bradley, Esq.  
*stands for arrangement.*  
 Dobson, Kut. & ors. *v.* Deane  
 and others.  
 Major & ors. *v.* Chadwick &  
 others.  
 Ellison *v.* Isles  
 Doe *d.* Graves & anor *v.* Wells  
 & anor.  
 Doe *d.* Littlejohn *v.* Wallisford  
 Doe *d.* Lloyd & wife *v.* Bea-  
 nett  
 Green *v.* Creswell  
 Doe *d.* Townsend & ors. *v.*  
 Mace & ors.  
 Davies *v.* Wagstaff  
 Gardner & ors. assignees, &c.  
*v.* Moulst & ors.  
 Andertou & anor. executors,  
 &c. *v.* Arrowsmith, exor. &c.  
 Sandys *v.* Hodgson  
 Smith *v.* Dixon  
 Jackson *v.* Hill  
 Holmes *v.* Wilson & ors.  
 Williams *v.* Burgess & anor.  
 Doe *d.* Higginbotham *v.* Bar-  
 ton & anor.  
 Plevin & anor. *v.* Prince  
 The Queen *v.* Baldwin  
 Duncombe, Esq. *v.* Daniel,  
 Esq.  
 Wright & ors. *v.* Perceval  
 The Queen *v.* Levy  
 Carey *v.* Pyke  
 Freeman & ors. *v.* Loder  
 Rawlins *v.* Desborough  
 Green *v.* The London Ceme-  
 tery Company  
 Johnstone *v.* Osborne  
 Merry & an. *v.* Chapman, Esq.  
 Frampton, exor. *v.* Champ-  
 neys, Bart.  
 The Queen *v.* Murphy & anor.  
 Good *v.* Bowditch  
 Thelwell *v.* Count di Aceto.  
 Godward *v.* Hannell  
 Peirce *v.* Fothergill

## PEREMPTORY RULES.

*In banc.*

Wilton, Gent. one, &c. *v.*  
 Chambers  
*In the Matter of* James Wad-  
 dell & anor.  
*Same*  
 The Queen *v.* Mayor of Cam-  
 bridge  
 The Queen *v.* Governors of St.  
 Andrew, Holborn  
 Hall *v.* Butler & an. in rep.  
 The Queen *v.* Churchwardens  
 of St. James's, Clerkenwell

## Barra's Bench.

Ex parte Thomas Hallacks &  
 anor. *v.* Churchwardens of  
 St. Mary, Cambridge  
 The Queen *v.* Lords of the  
 Manor of Whichford  
 The Queen *v.* Trustees of St.  
 Pancras Church  
 The Queen *v.* Steward of Ma-  
 nor of Richmond  
 Burgess *v.* Baker  
 Dickinson & wife *v.* Eyre  
 The Queen *v.* Governor of St.  
 Andrew, Holborn  
 The Queen *v.* Lady of the  
 Manor of Ham  
 Bastard, Esq. *v.* Smith & ors.  
 Earl Beauchamp *v.* Turner  
*In the Matter of* Rackham,  
 Gent. one, &c.  
 Earle *v.* Brown  
 The Queen *v.* Featherstonhaugh  
*v.* Pitt, Esq.  
*v.* Churchwardens  
 of Walsall Borough  
*v.* The Bailiffs of  
 Clun  
 White *v.* Robertson  
 The Queen *v.* The Grand Junc-  
 tion Railway Company  
 Utterton *v.* Castledine  
 The Queen *v.* Alderson & ors.  
 Bottrell *v.* Wordsworth & an.  
 The Queen *v.* The Mayor of  
 Carmarthen  
*v.* The Manchester  
 & Leeds Railway Company  
*v.* Pyle  
*v.* Mayor, &c. of  
 Swansea  
*In the Matter of* Willis, Gent.  
 one, &c. and Allen  
 The Queen *v.* Gamble & an.  
 Bailey, Esq. *v.* Bond & ors.  
 The Queen *v.* Churchwardens  
 of Edlaston  
 Sparkes *v.* Mayo  
*Bail Court.*  
 Archer *v.* Kearse  
 Rowe *v.* Sawyer  
 Leman *v.* Lewis  
 Andrew *v.* Marris and anr.  
 Newton *v.* Thompson  
 Pitcher *v.* King Esq. late Sher-  
 riff, &c.  
 Jones *v.* Williams.  
 Doe. dem. Faithful *v.* Roe  
 Smart and anr. *v.* Chell  
 Flood the ynr. *v.* Carter  
 Bendray *v.* Price, Clerk.  
 Duke of Beaufort *v.* Welch  
 Davis *v.* Swabey  
 The Queen *v.* Ellison—two  
 cases.  
 Yorke *v.* Chapman

Williams *v.* Brown  
 Barsham *v.* Bullock  
 Freeman *v.* Jervis  
 Ex parte Midford, Esq. in the  
 matter of *Hedder* and anr.  
 Gents, two &c.  
 Wood *v.* Shaw  
 Gibbs *v.* Trevanion and ors.  
 Thackthwaite *v.* Sinclair  
 Egan, Esq. *v.* Green.  
 The Queen *v.* the Poor Law  
 Commissioners, Olstonfield  
 Union

Justices of  
CheshireThe Justices of  
the E. R. of Yorkshire

## Bullar

## Dudley and ors.

Bishop *v.* Hatch, clerk  
 Sill *v.* Adams.

## SPECIAL PAPER.

\* Archbishop of York and ors.  
*v.* Trafford and ors.

Stockdale, a pauper *v.* Hansard  
 (part heard)

\* Doe *d.* Evans *v.* Evans

† Culley, Esq. *v.* doe. *d.* Tay-  
 lorson, in error

Peace *v.* Eastwood

Jackson *v.* Hill.

Burder *v.* Veley and anr.

Ramsay *v.* Norrabbell, in rep.

Bryan *v.* Sir G. Arthur

Griffin *v.* Ellis and anr.

Benjamin *v.* Belcher

\* Doe *d.* Riddeil and anr. *v.*  
 Gwinnell

\* Barry *v.* Lloyd

Hill *v.* Leach

Underwood *v.* Johnson

Calvert *v.* Moggs

Swann *v.* Sulton

Chaffers *v.* Wilson

Guardians of the Poor of Ban-

bury Union *v.* Robinson

Lloyd *v.* Pierce & ors., in rep.

Drewe *v.* Lainson Esq. late

Sheriff of Middlesex.

Thomson *v.* Lanyon

Saunders *v.* Morgan

Hutton *v.* Parker

\* Doe *d.* Parke & Wife *v.* Kirby

Walmsley and anr. *v.* Cooper

Tindall *v.* Hepton and Wife,

Extrix. &c.

\* Doe *d.* Blight *v.* Pett

The Guardians of Banbury

Union *v.* Robinson

\* Bruce and the Bath River

Navigation Company *v.*

Willis and ors.

Jones *v.* Minard

\* Mitchell *v.* Ede and ors.

\* A few of the cases in these Lists were included in those of last Term, and are repeated to complete the present List. Marked \* are special cases; the rest are demurrers. † In Error.

Holmes v. Clifton, Esq.  
 Fryer v. Coombes  
 The Grand Surrey Canal  
 Company v. Richards & au.  
 Biddulph and ors. v. Best  
 Lawrie v. Francis  
 Robinson and ors. v. May  
 Joyee v. Clarke and Goswick  
 Francis v. Baker  
 Read v. Wrought sued with  
 another.  
 Guppy v. Laxton, assignee

## CROWN PAPER.

The Queen v. The Guardians  
 of Wallingford Union  
 ————— D. Webb and  
 another.  
 ————— The Lord and  
 Steward of the Manor of Old  
 Hall  
 ————— The Church-  
 wardens of Bradford.

The Queen v. The Inhabitants  
 of Draughton  
 ————— The Inhabitants  
 of Caverswall  
 ————— The Inhabitants  
 of St. Andrew in Pershore  
 ————— The Inhabitants  
 of Stafford  
 ————— Theoph. James  
 ————— The Inhabitants  
 of Costock  
 ————— Eli Vught  
 ————— Exeter Improve-  
 ment Commissioners.  
 ————— The Inhabitants  
 of Bridgewater  
 ————— The Inhabitants  
 of Black Callerton  
 ————— The Inhabitants  
 of Stoke Albany  
 ————— The Inhabitants  
 of de Settlement of Thomas  
 Green &c.  
 ————— Same Joseph  
 Green &c.

The Queen v. The Select Ves-  
 try of St. Margaret, Leicester  
 ————— John Bunting,  
 junr.  
 ————— The Inhabitants  
 of St. Mary  
 ————— Thomas Wilson  
 de Church rate  
 ————— Same, poor  
 rate  
 ————— Stephen Jones  
 ————— Inhabitants of  
 Madbury  
 ————— The Inhabitants  
 of Huddersfield  
 ————— Justices of the  
 County of Worcester  
 ————— The Inhabitants  
 of Aston, near Birmingham  
 ————— Samuel Canner  
 and another  
 ————— The Inhabitants  
 of Burslem  
 ————— The Inhabitants  
 of Fordham

## Common Pleas.

## ENLARGED RULES.

Alchin v. Hopkins, clerk;  
 Bodle v. Osborn  
 Bishop v. Marsh  
 Hunter and ors. v. Claxton  
 In the matter of Dodington  
 and Bailward  
 Williams v. Graham  
 Medley and ors. v. Prichard  
 and anr.  
 Sanderson and ors. v. Piper  
 In the matter of Hare, Milne  
 and Haswell  
 In the matter of do.  
 James v. Lingham  
 Pole v. Rogers  
 James v. Lingham  
 Taverner v. Little  
 Hannay v. Herepath  
 Fendall v. Nokes  
 Jackson v. Bull  
 Collins v. Evans  
 Howell v. Brodie  
 Beckett v. Wood  
 Fitzgerald v. Williams  
 Gouldstone v. Tovey  
 Huntley v. Bulwer  
 Dart v. Westcott and ors.  
 Edman v. Allen  
 Higham v. Rabett  
 Earl Mansfield v. Blackburne  
 Same v. Same  
 Doe d. Wyats and ors. v. Stag

Hayes v. Goodman  
 Mince v. Hooper  
 Feltham v. Cartwright  
 Morrell v. Martin  
 Dee v. Trye  
 Doe d. Davis v. Galacre  
 Attwood v. Taylor and ors.  
 Same v. Same  
 Newton and ux. v. Harland  
 and anr.  
 Sharpe v. Newsholme  
 Hitchcock v. Walford, clerk

## Cur. ad. vult.

Muskett v. Hill  
 Toplis and anr. v. Grane  
 Edwards v. Bishop of Exeter  
 and ors.  
 Gas and Coke Company v.  
 Turner  
 Paget v. Chambers  
 Bonzi v. Stewart  
 Same v. Same  
 Crook and anr. v. Stephens  
 Morgan and anr. v. Miller

## SPECIAL ARGUMENTS.

Devaux and anr. v. Steel  
 Whiskin v. Braddon  
 Lackington and ors. assees v.  
 Coombs  
 Jolley v. Bonnin  
 Knocker v. Bunbury and ors.  
 Abbott and ors. assees v. Hicks

Dutchman v. Twotts  
 Abbott v. Broepe  
 Russell v. Sanders, sued &c.  
 Same v. Bartlett, sued &c.  
 Adams v. Bush and ors.  
 Doe (Marchant) Errington  
 Deacon and ors. v. Stodhart  
 and ors.  
 Graham and ors. v. Misson  
 Hill v. White and ors.  
 France and an. v. Same  
 Byers and ors. assees &c. v.  
 Southwell  
 Steanes and ors. assees &c.  
 v. Wainwright  
 Beesley v. Dolley  
 Pisani v. Lawson  
 Pigani and ors. v. Springfield  
 Devaux and anr. v. Steinkeller  
 Belcher and ors. assees v. Old-  
 field  
 Hill v. White and anr.  
 Lohmann v. Rougemont and  
 anr.  
 Brook and ors. assees v. Mit-  
 chell and ors.  
 Sainson v. Rhodes  
 Duely v. Linnell  
 Smith v. White  
 Cockburne and anr. v. Wright  
 and ors. Ex. &c.  
 Carswell ad. v. Farncomb

## Exchequer.

## PEREMPTORY PAPER.

Hemingway v. Hamilton  
 Wise and another, executors  
 &c. v. Parlees  
 Jones v. Cottingham  
 Robinson v. Powell  
 Creswell v. Moore  
 Same v. Moore Wo.  
 Clipp and another v. Harris  
 Newman v. Drake  
 Thomas v. Puntan  
 Yorston v. Clay, sued with ano.  
 Cannock v. Webb  
 Felton v. Luckman  
 Slark v. Wells  
 Tickner v. Smith  
 Williams v. Johnson and ors.  
 Williamson v. M'Knight  
 The Queen v. Jas. Reid & ano.  
 in a cause  
 Bank of England v. Reid & an.  
 Carroll, Knt. and another v.  
 Collingwood, sued, &c.  
 Malam v. Creblin  
 Hebbert v. Roberts  
 Gurney v. Sandys, (since dec.)  
 Davenport, executrix v. Lord  
 Boyle  
 Putney v. Thring  
 SPECIAL PAPER,  
*Standing for Judgment.*  
 The Chancellor &c of Univer-  
 sity of Cambridge v. Bald-  
 win  
 (heard 24th April, 1839)

Raleigh and ors. v. Atkinson  
 (heard 22nd April, 1839)  
*For Argument.*  
 Hughes, public officer &c v.  
 Atkinson  
 Lawrence, sec. &c v. Wynn  
 Same v. Bourne  
 Collingbourne v. Mantell  
 Percival and others v. Cooke  
 \*Hills and others v. The Lon-  
 don Assurance  
 Evans v. Jones and another  
 Rurs v. Watson  
 Scott and another v. Kightley  
 Carwardine v. Watkins  
 Hodges v. Watkins  
 Wynn v. Mitchell  
 Braithwaite v. Skinner and  
 others, sued with another  
 Reynolds v. Joy  
 Same v. Nicholls  
 Thorpe, Clerk v. Mattingley  
 Rushbury v. Sparkes  
 \*Reid v. Binney and others  
 Wilkins and ux. v. Down  
 Twinberrow v. Bancutt  
 \*Spry v. Bromfield  
 NEW TRIALS.  
*Standing for Judgment.*  
 Doe d. Hiscocks v. Hiscocks  
 (heard 13th Nov. 1836)  
 Knight and ano. v. Ferguson  
 (heard 14th Jan. 1839)  
*For Argument.*  
 Speck v. Phillips

Bennett v. Avery  
 Coyle v. Woodley  
 Castello v. Morgan  
 Hudson v. Nicholson and ors.  
 Brashier v. Jackson  
 Tollit v. Sherstone  
 Ward v. Byrne and another  
 Orlebar v. M'Curdy  
 Buttemer v. Hayes  
 Pratt v. Arnold  
 Young v. Wigney and another  
 Brayne v. Cooper  
 (Rule refused 24 April, 1839)  
 Welcome v. Upton  
 Dixon v. Sadler  
 Dixon v. Sadler  
 Jackson v. Cummins and ors.  
 Duckworth v. Harrison  
 Wallis v. Harrison and ors.  
 Rule discharged 24th April.  
 Robinson v. Iveson  
 Fry the Elr. v. Bridger & ano.  
 Bridgeland v. Shapter  
 Salmon v. Bell  
 Williams v. Bryant the Elr.  
 Heath v. Holden  
 Carter & ano. Assig. v. Harper  
 Harris and ano. v. Lloyd Esq.  
 Lawrence sec. &c v. Wynn  
 Lawrence sec. &c v. Wynn  
 Lawrence sec. &c v. Bourne  
 Lawrence sec. &c v. Bourne,  
 Doe d. Lord Viscount Lifford  
 v. Leuton

SITTINGS IN EQUITY.  
TRINITY TERM, 1839.

## Equity Exchequer.

Lord Abinger.

Wednesday May 22 Petitions and Motions.

Mr. Baron Alderson.

Thursday .. 23 { Petitions in Hull, and  
 Selby Railway. By  
 Order.

Lord Abinger.

Tuesday .. 28 { Pleas, Demurrers, Excep-  
 tions, & Further Direc-  
 tions.

Mr. Baron Alderson.

Wednesday .. 29 Petitions and Motions.  
 Thursday .. 30 Causes.

Lord Abinger.

Saturday June 1 { Pleas, Demurrers, Excep-  
 tions, & Further Direc-  
 tions.  
 Tuesday .. 4 Petitions and Motions.  
 Friday .. 7 { Pleas, Demurrers, Excep-  
 tions, & Further Direc-  
 tions.

Mr. Baron Alderson.

Saturday .. 8 Petitions and Motions.

Causes likely to occupy much time are not  
 to be put into the Paper for hearing till the  
 Sittings after Term.

ARRANGEMENT OF BUSINESS IN  
THE QUEEN'S BENCH.

## PRACTICE COURT.

The Court will proceed on *Demurrers*,  
 selected from the Special Paper (for which  
 see the List at p. 62), on Friday the 31st May,  
 Saturday 1st June, Tuesday 4th and Wednes-  
 day 5th June.

The *Peremptory Paper* will be taken on  
 Monday 3d June, and the Cases not ready will  
 be struck out; and Cases in the *Peremptory*  
*Paper*, where the parties agree, will be taken  
 any day when there is time.

# The Legal Observer.

MONTHLY RECORD FOR MAY, 1839.

—“Quod magis ad nos  
Pertinet, et nescire malum est, agitanus.”

HORAT.

## STUDY OF THE LAW.—UTILITY OF LECTURES.

BUT little new light can be thrown on the utility of Law Lectures as one of the means of studying English Law; but we avail ourselves of a recent Lecture on that subject delivered by Professor Carey at the University College, London.

I cannot but be aware, (he says) that although the plan of teaching English law by means of lectures has been adopted for some years, and not without a considerable share of success, still it has not become familiar to the habits and feelings of professional men—it has not yet naturalised itself among us. This circumstance creates a twofold difficulty, inasmuch as there is no particular method of instruction marked out for the professor by the accumulated experience of others; nor, on the other hand, does there exist any very definite notion of the nature or extent of the instruction to be looked for in his lectures. Hence it can hardly happen but that the expectations of the student should be frequently disappointed, and that the endeavours of the professor should be subject at least to occasional failure.

“Notwithstanding these difficulties, I entertain some confidence of success, from a strong conviction that oral instruction is peculiarly well suited to the elementary study of the law; for, although the ultimate questions that arise in practice are complicated and infinite, yet the elements themselves are comparatively simple, and capable alike of systematic arrangement and of familiar illustration.

“This is the mode in which legal studies are commenced in every country except our own, in which law is pursued as a profession. True it is that, among us, lawyers have hitherto been formed with little other professional education than what may be gathered in the routine of practice; but are we, therefore, to conclude that there is in English law some peculiarity which renders systematic instruction either inapplicable or superfluous? In

answer to this question, it will be enough for me to appeal to the success which has attended the efforts of those whom I may be proud to call our fellow-labourers, in the United States of America.

“The law of England is, indeed, in its form and its expression, peculiarly practical. A practical education is therefore more, perhaps, than in any other system, indispensably requisite. The conviction of this necessity appears to have led very generally to the conclusion, that all other means of acquiring legal knowledge are at least useless, if not absolutely pernicious. This opinion appears to me to imply a misconception of the nature of elementary instruction, the main object of which is not to supersede practical education, but to be an introduction and a companion to it. In the prosecution of this object, it should be the constant aim of the professor to prepare the mind of the student,—to facilitate his progress,—and to put him in possession of the means of ultimately attaining to a more complete mastery over his subject than he could acquire by any more desultory way of study.

“The characteristic of an education merely practical is, that it throws the beginner at once upon matters of detail, and leads him to deal with principles, only in their application to individual cases. The effect which is produced by this training on the mind of the student may, in after-life, be clearly traced in the habits and language of the practitioner. Ask an English lawyer for the definition of a right, and you will generally find that he is embarrassed in his answer; but lay before him a statement of facts, in which the right in question is involved, and no man will be more prompt to advise whether an action will lie. Nay, so entirely are the members of the legal profession in this country absorbed in the consideration of details, that they do not even aspire to any higher reputation. Willingly conceding to foreign jurists the palm of superior science, it is enough for them to obtain the less exalted praise of superior skill.

“This circumstance may, no doubt, in part be attributed to the character of the English

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turn of mind, of which it has justly been observed, that, as in other subjects, so likewise in jurisprudence, it exhibits a fact of a twofold nature—on one side good sense and practical ability; on the other, the absence of general ideas and elevation of mind on theoretical questions.

"This peculiarity of the professional character, whatever may be the cause on which it originally depends, is no doubt confirmed and perpetuated by being at so early a period impressed upon the mind of the student.

"Supposing however, for a moment, that all higher views are beyond the scope of a practical lawyer, and supposing that there is, in truth, no object to be sought for in legal education beyond that of training up a skilful advocate, still I think it will require but little consideration to perceive that even this object would not only be more easily, but more effectually attained by the help of elementary instruction.

"One of the faculties most important to the formation even of a practical lawyer, is the power of systematic arrangement. By this faculty it is that when a question is proposed, he is enabled to view it, not merely as an isolated point, but also in all its various and complicated relations. His mind thus lights, as if by intuition, on the perception of real analogies, rejecting all such as are false, accidental, or merely apparent. The way in which this faculty assists the practitioner in the exercise of his profession, is by enabling him to form his opinion with superior strength and correctness of judgment, and to support this opinion, when formed, with a combination of arguments at the same time so various in detail, and so harmonious in principle, as to present a general consistent view of the relations between the point in question and the other portions of the system, and to determine at once the place to be assigned to it in that system considered as a whole. The effect that this mode of treating a subject will produce on the minds of those to whom it is addressed will, I believe, be almost invariably found to be, beyond all measure, greater than any that can be brought about by the most consummate skill and astuteness in the employment of desultory topics.

"There are, indeed, men of minds so strong and clear, that, under any circumstances, they will attain to this power of arrangement. Although their knowledge consisted originally in a mere accumulation of details, they will yet create some kind of classification: they will acquire something like a perception of the mutual relations and coherency of the several parts of the system; and thus be enabled, more or less completely, to grasp and comprehend it as a whole.

"These, however, are but brilliant exceptions: there are few minds that have vigour enough to reduce their mass of knowledge into order; and even in those few I think it may be observed that the order and the classification at which they arrive are frequently founded more on the character of their own

minds than on any philosophical view of the nature of things, and consequently, though perfectly adapted to their individual use, are but little calculated to direct the labours, or facilitate the studies of others. It is to a consciousness of this circumstance—perhaps I may be permitted to say, to a consciousness of this defect—that I would attribute the fact, that men who evidently had, in their own minds, a comprehensive view of law, have, in their writings, carefully and intentionally avoided every thing like an approach to systematic arrangement.

"Where shall we look for a mind stronger than that of the commentator on Littleton? Where for a mind clearer than that of the annotator on Saunders? These two writers, extremely different in character, and living in times far distant from one another, yet agree in this one point, that although their works were intended to be elementary and institutional, they have nevertheless adopted a form of composition which renders them singularly ill adapted to the use of the beginner.

"The unsystematic form in which law is presented to the practitioner, and even to the advanced student, appears to me to be an additional reason for endeavouring to furnish the beginner, in the first instance, with such a general view of the subject as shall enable him, in his subsequent progress, to give an arrangement to the details which would otherwise crowd upon him in hopeless confusion.

"The difficulties which the student has to encounter when thrown at once upon the usual routine of study, without such preparatory instruction, are so clearly described by Dugald Stewart, that I cannot refrain from quoting the passage:—

"‘I have heard it observed,’ says he, ‘that those who have risen to the greatest eminence in the profession of law have been in general such as had at first an aversion to the study. The reason probably is, that to a mind fond of general principles every study must be at first disgusting which presents to it a chaos of facts apparently unconnected with each other. But this love of arrangement, if united with persevering industry, will at last conquer every difficulty—will introduce order into what seemed, on a superficial view, a mass of confusion, and reduce the dry and uninteresting detail of positive statutes into a system comparatively luminous and beautiful.’

"These feelings of disgust which, even to minds capable of rising to the greatest eminence, create such difficulties as it requires persevering industry to conquer, it will be the first object of the professor to remove. He will endeavour by tracing out the coherency of the general principles, and explaining the mode of their application to individual cases, to present to the beginner the study of the law, no longer as a mass of confusion—no longer as a chaos of unconnected facts—but as a system gradually unfolding itself to his view, and one which, even in the early stages of his progress, he can perceive to be comparatively beautiful and luminous."

After some further remarks, the learned lecturer proceeds to observe on the commentaries of Sir William Blackstone.

"It has, indeed, been alleged, that the systematic language of the Roman law, on which he founded his arrangement—questionable in itself—still more questionable in its application to the law of England—has, at all events, resulted in an utter confusion of ideas, occasioned by a complicated misunderstanding of the terms employed.

"This criticism is founded in truth. Blackstone adopted the theoretical views which were in his day prevalent among lawyers, and has thus perpetuated their errors, with the addition of some of his own. But this appears to me to detract but little from the utility of his work. His clear, practical sense has, in a great measure, remedied the evils which might have been expected from a faulty analysis. The manner in which the several subjects succeed one another, however unsystematic, is, with some exceptions, well suited to the convenience of the student. His chief excellence, however, as a writer, lies in his treatment of individual subjects—and in this I wish to speak, not of the means employed, but of the ends produced.—He possesses the power of presenting the matter under consideration as a clear, connected, and intelligible whole. His writings thus command the attention of the student, and gain a ready entrance to his mind, producing there an impression so definite and lasting, that all subsequent knowledge is referred to it, and arranges itself around it as a nucleus. Hence it is that the Commentaries are referred to by the practised lawyer with no less satisfaction than that with which they are perused by the student. The faults of Blackstone it is not difficult to point out: I wish it were as easy to emulate his merits."

The plan intended to be pursued by Mr. Carey in the course of lectures on which he has entered, consists, 1st of *Public Law*, which he divides into the six following heads:—1. International Law. 2. Constitutional Law. 3. Colonial Law. 4. Administrative Law. 5. Ecclesiastical Law. 6. Criminal Law. 2nd. *Private Law* he divides into, 1. The Law of Property. 2. The Law of Torts. 3. The Law of Contracts. 4. Commercial Law. 5. The Law of Persons. 6. The Administration of Justice in Courts of Equity. 7. The Administration of Justice in Courts of Common Law. From this latter part of the lecture we extract the following:—

"I. The first branch of private law is that which treats of Property, considered with respect to its enjoyment and transfer. Here will be noticed the division of property into real and personal. With respect to the former, it will be necessary to explain the nature of tenures—the legal conception of an estate—

the various kinds and degrees of interest—the nature of incorporeal tenements, and other rights answering to the *jura in re* of the Roman law. This will be followed by a similar inquiry into the nature and incidents of personality,—whether corporeal, such as goods and chattels, or incorporeal, such as copyright—in the course of which will be introduced an explanation of the terms *property* and *possession*, as applied to personality, and of the distinction between general property and special property.

"This branch also comprehends the Law of Conveyancing, including the creation and transfer of estates,—whether absolute, as by sale, or conditional, as by mortgage;—together with the doctrine of titles; the law relating to the succession of property by will or intestacy, or, as it is more usually termed, the law of executors and administrators; and the law relating to uses and trusts.

"It will be perceived that this branch of law, is, in its subject-matter, co-extensive with the *Jus Rerum* of the Roman jurists.

"II. The second branch of private law is that which treats of torts, or civil injuries; whether these torts are committed against the property of another, or against what are sometimes denominated the absolute rights of persons. These absolute rights of persons, as they are termed, fall under the consideration of private law only in so far as they are infringed; it will, therefore, be sufficient to confine our attention to the injuries for which redress is provided, without entering into any abstract inquiry into the nature of the rights themselves.

"III. The third branch of private law will treat of the nature and effects of contracts, of the general rules relating to *Choses in action*, and of the distinction between special contracts and simple contracts. In taking a view of simple contracts, it will treat of the forms which are, in certain cases, essential to their validity, of the necessity of a consideration, of the different kinds of consideration, and of such as are void or illegal. The distinction will be pointed out which exists between,—1st, express contracts,—2d, implied contracts, or those of which the existence is to be inferred from circumstances,—(these two kinds of contracts being the same in their nature, and differing only in the mode of proving them,)—and 3rd, such contracts as are said to be implied in law. This implication takes place when, in consequence of certain things done, a relation is created between the parties, producing, in its legal operation, effects similar to those of a contract. This was termed in the Roman law a *quasi contract*.

"The rules which govern the nature and operation of contracts in general will be more particularly illustrated in their application to the contracts of most frequent occurrence, particularly those of sale and bailment."

"IV. The fourth branch is that of Commercial Law.



"A great portion of this subject is intimately connected with the law of contracts, and is introduced under a different head, chiefly from motives of convenience. I might urge, in justification of this plan, that in many countries the law of commerce constitutes a separate and distinct code; and even where this is not the case, there may be reasons for giving it a separate consideration. The law of contracts, considered as a part of the law of *Nisi Prius*, has a continual reference to the immediate result of a contract, in imposing a liability upon one party, and conferring on the other a right of action. The parties to the contract are viewed only in the light of plaintiff and defendant. Mercantile contracts are of a more complicated nature, frequently extended through a long course of dealing, and involving the rights of numerous parties. These rights are indeed continually brought before courts of justice, and it is only thus that the rules of commerce receive the stamp of law; we must, therefore, derive our knowledge from the judicial decisions pronounced in individual cases. But, at the same time, it is only by taking a more general view that we can comprehend the principles by which mercantile transactions are regulated.

The principal subjects treated of under this head will be, bills of exchange and other negotiable securities—partnership—principal and agent—insurance—the law of shipping—and maritime contracts: the whole to conclude with insolvency and bankruptcy.

V. The Law of Persons will contain a view of the principal relations of domestic life, and of the several classes of persons who are subject, in a greater or less degree, to legal incapacity; for instance, minors, aliens, lunatics.

"VI. The sixth head relates to the administration of justice in Courts of Equity. Under this head will be introduced an account of the origin and progress of the equitable jurisdiction of the Court of Chancery, and of the subjects to which this jurisdiction extends, together with an outline of the mode of procedure.

"VII. The last head relates to the administration of justice in Courts of Common Law. It will contain an historical outline of the jurisdiction of the several courts, superior and inferior, and an exposition of their present practice—the method of commencing an action—the doctrine relating to appearance—the history of arrest on mesne process—the principal rules of pleading—trial, with its incidents, including the law of evidence—interlocutory proceedings, and proceedings in the nature of an appeal—judgment, costs, and execution.

"Although this is the last point at which I have arrived in my analysis, it is the first on which I propose to undertake a course of lectures. The subject is one which, notwithstanding the dryness of practical details, can hardly be without some degree of interest even to the unprofessional student, as containing an explanation of that visible portion of the law which comes under his observation, and excites his curiosity in courts of justice. To the professional student it is calculated to be of pec-

uliar utility, as it conveys that kind of knowledge of which he will first find the want in the further prosecution of his studies; for as the law has been developed in its present form chiefly by the practice of the courts, so its most important rules are frequently conveyed in the language of the courts, and are thus absolutely unintelligible to those who are not familiar with the terms of practice."

We add the following extract, which closes the lecture, in the sentiments of which we entirely concur:

"The view which I have taken of the past history and present condition of the law of England, appears to me to confer at this day a peculiar importance on the establishment of instruction in law as a branch of academical education. The beneficial results to which such an institution may lead are not limited to its direct and immediate effects. Were the class of the professor reduced to a solitary pupil, the amount of instruction afforded him might be far from inconsiderable, but the advantage he derived would, in no material respect, differ from what might have been as effectually secured by the perusal of published treatises. But when the class consists of a number of students nearly of the same age, and engaged in the same pursuits, who are thus made to travel together over the same ground, keeping pace with one another, and having their attention directed at the same time to the same objects,—the effect produced by the lectures does not lie merely in the information they contain, but in the spirit with which they animate the student, and the controul which they exercise over his labours.

"Thus it is that the professor, by giving a peculiar direction to the studies of his pupils, and leading them to the cultivation of a particular turn of mind, may be enabled ultimately to exercise an extensive influence over the interests of society at large. Never has there been a period in the history of England, since the great movement which led to the dethronement of the Stuarts, when an influence of this kind was so likely to be attended with important results as that in which we now are placed. The practical defects of our law are every day attracting more strongly the public attention—a spirit of change is already extensively at work. How are these defects so likely to be remedied? how is the spirit of change so capable of being so beneficially governed and directed, as by creating a body of lawyers, in whom the knowledge of practical details is subordinate to a general comprehension of the whole system?"

CIRCUIT RECEIPTS AND EXPENDITURE OF THE JUDGES IN  
1706, 7.

## Expenditure.

L<sup>d</sup> C. B. Ward. } Northern Summer Circuits.  
Mr. J. Tracy. }

July 12th, 1706.

Paid ye house bill at Newark .	2	5	11
To ye servants in the house .	0	5	0
To ye poore .	0	1	6
Ffor the cooke's horses .	0	2	4
Paid at Great Ashff'd .	0	14	0
To ye poore there .	0	1	0
To ye poore on ye road to Durh <sup>i</sup> .	0	0	10
Durh <sup>i</sup> :			
To ye musick at Durham .	0	10	0
To ye Deane's servants .	0	10	0
To ye library boy .	0	2	6
To ye man at the Minster .	0	2	6
To ye Bishop's servants .	10	0	0
Carlisle:			
To ye master gunner at Carl <sup>i</sup> .	1	0	0
To ye sheriff's cooke .	1	0	0
To ye butler and yeoman of the wine cellar .	1	0	0
To ye storehouse keeper .	0	10	0
To ye maids .	0	10	0
The porter .	0	5	0
The musick .	0	5	0
The poore .	0	5	0
The coachman, sherr <sup>i</sup> .	0	5	0
Ffor the cooke's horses .	0	11	0
To ye centinells at ye doore .	0	2	0
To Mr. Simpson's serv'ts at Penrith .	0	10	0
To ye musick there .	0	5	0
To ye poore .	0	5	0

Lancaster.

Pr'snts:			
Corporason, a quarter of beefe, a veale, a mutton <sup>a</sup> .	0	10	0
Mr. Metcalfe, 2 doz <sup>n</sup> red wine .	0	5	0
Countess Derby, a buck .	0	10	0
The sheriffe, 6 doz <sup>n</sup> wine .	0	10	0
Ld. Derby, a stag .	1	0	0
Lord Powys, a buck .	0	10	0
Lord Mountague, 2 doz <sup>n</sup> red .	0	5	0
Coll <sup>i</sup> Grahne, a buck, 1 doz <sup>n</sup> claret, 6 bottles w't wine, 4 bott. Caltavella, 4 pt. bott.. Smirna .	1	0	0
Coll <sup>i</sup> Stanley, $\frac{1}{2}$ a buck } and 6 fowles, more game }	0	5	0
	0	2	6
Paid Mr. Birthap for goods bought of Mr. Shield for ye circuite .	0	8	0
Given the sexton .	0	2	0
The servants .	2	0	0
The poore .	0	5	0
Paid ye cooke's wages .	3	0	0
Paid ye house bills .	19	6	0

<sup>a</sup> This, and the following nine items, are gratuities to the servants of the persons who made presents to the judges.

Ffor cookes horses .	0	12	6
Sherr <sup>i</sup> Coachman .	0	10	0
Given ye horslers .	0	5	0
To old Hopwood, ye trumpeter .	0	10	0

Preston:

The house bill .	4	3	0
The cookes' horses .	0	2	6
To ye servants .	0	5	0
To ye poore .	0	2	6
To ye horslers .	0	4	0
More after ye bill .	0	4	0

Warr.

Cookes' horses .	0	2	8
House bill .	2	16	6
To ye servants .	0	2	6
To ye horslers .	0	2	6
To ye poore .	0	2	6

Paid the cooke his expences to London from Lanc<sup>r</sup> .

1	17	6
10	05	2
32	16	0
20	8	7

63 9 9

Disburst by Mr. Dickeson . 65 3 10  
By Braban . 63 9 9

128 13 7

Rec'd by D. . 57 4 0  
By B. . 43 7 0

100 11 0

Due in all . 28 2 7

From each Judge . 14 1 3 $\frac{1}{2}$ 

## Receipts.

West Lent Circuit, 1706, 7.

Gloves, double .	2	0	0
Southton:			
Admiss: Guard: .	0	6	8
Wilts:			
Admission Guardian .	0	6	8
1 fine .	0	6	8
Of Mr. Marshall Johnson .	12	0	0
Som'sett:			
1 fine .	0	6	8
Of Mr. Marshall Johnson .	20	10	0
Oakehampton:			
Admiss: Guardian .	0	6	8
1 fine .	0	6	8
Launceston:			
Of Mr. Marshall Johnson .	6	6	8
Gloves .	1	0	0
3 fines .	1	0	0
1 Adm: Guard .	0	6	8
Ex'on:			
5 fines .	1	13	4
1 Adm: Guard: .	0	6	8
Honiton:			
1 fine .	0	6	8
Axmi'ster:			
1 Adm: Guard: .	0	6	8

47 06 8

47 06 8

Rec'ts.—Nort' Su'mer Circuit.			
Hillington :			
A fine . . . . .	0	6	8
Buckingham :			
Of Mr. Marshall Cotton . . . . .	4	0	0
Of Marsh' Cotton more . . . . .	11	0	0
Glove money . . . . .	03	0	0
2 Adm : of Guardians . . . . .	0	13	4
	19	0	0

Rec'ts.—Norf' Lent Circuit, 1707, 8.			
Aylesbury :			
Of Marshall Hayes . . . . .	3	0	0
Glove money . . . . .	1	0	0
Bedford :			
Of Marshall Hayes . . . . .	4	10	0
More of him . . . . .	1	1	6
Glove money . . . . .	1	0	0
Huntingdon :			
Of Mr. Marshall Hayes . . . . .	3	0	0
Glove money . . . . .	1	0	0
j fine . . . . .	0	6	8
Cambridge :			
Of Mr. Marshall Hayes . . . . .	j	0	0
Glove money . . . . .	1	0	0
j fine . . . . .	0	6	8
Thetford :			
Of Mr. Marshall Hayes . . . . .	3	j	j0
Glove money . . . . .	1	0	0
Bury :			
Guardian Admission . . . . .	0	6	8

# REGULATIONS RELATING TO PRIVATE BILLS IN PARLIAMENT.

THE following are the resolutions relative to Committees on Private Bills.

1. Resolved, That the following shall be the several Forms of Declaration which every member shall sign before he shall be entitled to attend or vote on any Committee on any Private Bill :—

No. 1.—Declaration of a Member whose name is on the List prepared under the direction of Mr. Speaker for . . . . .

The undersigned, being one of the members whose name is on the list prepared under the direction of Mr. Speaker, to which list the bill for . . . . . has been committed, hereby declares, that he is willing to serve throughout the proceedings of such committee; and that he will never vote on any question which may arise without having duly heard and attended to the evidence relating thereto.

*Memorandum.*—The declaration, signed as aforesaid, must be delivered to the clerk of the committee on the bill before the committee shall proceed to appoint a chairman, otherwise the member signing the same shall not be entitled to attend or vote.

No. 2.—The declaration of a member whose name has been added to the list prepared under the direction of Mr. Speaker by

the committee of selection, his constituents having a local interest in the bill for . . . . .

The undersigned, not being one of the members whose name is on the list prepared under the direction of Mr. Speaker, to which list the bill for . . . . . has been committed, hereby declares, that his constituents have a local interest in such bill, and that, in consequence thereof, he has applied to the Committee of Selection, and his name has been added to the list :—He further declares, that he is willing to serve throughout the proceedings of such committee, and that he will never vote on any question which may arise without having duly heard and attended to the evidence relating thereto.

*Memorandum.*—The declaration, signed as aforesaid, must be delivered to the clerk of the committee on the bill before the committee shall proceed to appoint a chairman, otherwise the member signing the same shall not be entitled to attend or vote.

No. 3.—The declaration of a member whose name has been added to the list prepared under the direction of Mr. Speaker by the Committee of Selection, his constituents having no local interest in the bill for . . . . .

The undersigned, being one of the members selected and added to the list by the Committee of Selection, to which list the bill for . . . . . has been committed, hereby declares, that his constituents have no local interest, and that he has no personal interest in such bill; and that he is willing to serve throughout the proceedings of such committee; and that he will never vote on any question which may arise without having duly heard and attended to the evidence relating thereto.

*Memorandum.*—The declaration, signed as aforesaid, must be delivered to the clerk of the committee on the bill before the committee shall proceed to appoint a chairman, otherwise the member signing the same shall not be entitled to attend or vote.

2. Resolved, That, as soon as possible after the sitting of the Committee of Selection, at which the name of any member shall have been added to any list prepared under the direction of Mr. Speaker, the clerk attending the Committee of Selection shall give notice to each such member of his name having been so added, and of the time when the committee on the bill shall have been appointed to meet.

3. Resolved, That the committee clerk shall furnish to each member appointed to serve on a committee on a private bill, who shall apply for the same, a form of one of the above declarations, according to the class to which the member may belong; and that such application shall be made to the committee clerk, either in the committee clerks' office previous to the time when the committee shall have been

appointed to meet, or in the committee room, previous to the door thereof being locked, as hereinafter directed.

4. Resolved, That the Committee of Selection shall in each case direct what number of the members (not locally interested in the bill) selected and added to the list by them, shall be a quorum of such members.

5. Resolved, That so soon after the expiration of half an hour, and not sooner, after the time appointed for the first sitting of a committee on a private bill, as there shall be present at least five members appointed and duly qualified to serve on such committee (including a quorum of selected members), the clerk of such committee shall give notice that a sufficient number of members to proceed to business is present, and the clerk shall direct the messenger in attendance on the committee to clear the room of all strangers, and to lock the door of the committee room: the members shall then proceed to appoint a chairman; and that no member shall be entitled to attend or vote on such committee who shall not have duly delivered his declaration to the clerk previously to the time when the door shall have been so locked.

6. Resolved, That members whose constituents have a local interest in any private bill, but who are not on the list to which such bill shall have been referred, and who in consequence desire to be added to the committee on the bill shall make especial application, either personally to the Committee of Selection, at any sitting of such committee which shall be held prior to the day appointed for the meeting of the committee on the bill, or in writing stating the nature of such interest, to be delivered at the committee clerk's office prior to such meeting of the Committee of Selection; and so soon as the Committee of Selection shall have decided to add the name of such member to the list, the clerk shall notify the same in writing to the member who shall have made the application.

7. Resolved, That no committee on a private bill shall, without leave of the house, proceed to business, or continue their inquiry or deliberations, unless a quorum of the selected members shall be present; and that if at any time during the sitting of the said committee a quorum of the selected members shall not be present, the chairman of the committee shall suspend the proceedings of such committee until such quorum shall be present; and that if at the expiration of one hour from the time fixed for the meeting of the committee or from the time when the chairman shall have so suspended the proceedings of such committee, a quorum of the selected members shall not be present, the chairman shall adjourn the committee until twelve of the clock of the day on which the house shall next meet, and report forthwith to the house the circumstances of the case.

8. Resolved, that if at any time after the committee on a bill shall have been formed, a quorum of members required by the standing orders, or by the foregoing resolutions, cannot

attend in consequence of any of the members who shall have duly qualified to serve on such committee having become incompetent to continue such service by having been placed on an election committee, or by death, or otherwise, the chairman shall report the circumstances of the case to the house, in order that such measures may be taken by the house as shall enable the members still remaining on the committee to proceed with the business referred to such committee, or as the exigency of the case may require.

9. Resolved, That no petitioners against any private bill shall be heard before the committee on the bill, unless such petition shall have been presented to the house three clear days before the day appointed for the first meeting of such committee; unless the petitioners shall complain of any matter which may have arisen during the progress of the bill before the said committee.

## PARLIAMENTARY RETURNS.

### EXCHEQUER EQUITY FEES.

An Account of all Fees paid on Proceedings on the Equity Side of the Court of Exchequer to Her Majesty's Remembrancer, and of the Duties performed in respect of each Fee.

1st. On each writ of commission issued 6s. 8d.

This is a very ancient fee, and has been recognized in returns made to the Houses of Parliament more than 100 years ago. There is no duty performed by the Queen's Remembrancer in respect of it; and is supposed to have originated at the period when the Queen's Remembrancer and his table clerks apportioned the fees of his office between them; but it is believed to be payable in respect of the signature of the Queen's Remembrancer to the writ, and the fee is accounted for to the public.

2d. On each renewed writ of commission 3s. 4d.

The above remark applies also to this fee.

3d. On each writ of Injunction, 2s.

The above remark applies also to this fee.

4th. On every 100l. a receiver and his sureties are bound by recognizance to pay to the Sovereign, on failure of the due performance of the office of receiver in a suit in equity, 6s. 8d.

This is a fee as ancient as the preceding; but no service is performed by the Queen's Remembrancer in respect of it, and it is accounted for to the public.

5th. For each receiver's recognizance, cancelled or vacated, 2s.

The service performed by the Queen's Remembrancer in respect of this fee is to see that the recognizance is properly vacated or discharged by order of court, and then to sign a docket on the enrolment and entry of such recognizance discharging the same; and the fee is accounted for to the public.

- 6th. For the signature of the Queen's Remembrancer to each decree or order of court (called the *Intretur*) previously to the same being entered, and a calendar made of them, *2s.*

This service is actually performed by the Queen's Remembrancer for the fee, which is accounted for to the public.

- 7th. For the entry of each folio of seventy-eight words of all decrees and orders of court, examining the entries with the original decrees and orders, previously to the same being placed among the records of the court, and which entries are subsequently strongly bound up in books, and placed among the records of the court, and become evidence of the court's proceedings and adjudication in the causes and matters to which such decrees and orders respectively relate or refer to, *8d.*

This service is actually performed by the Queen's Remembrancer and his entering registrar, not being a salaried officer; and the proportion of the fee received by the Queen's Remembrancer himself, and accounted for to the public, is, per folio, *5d.*

- 8th. For each folio of seventy eight words of office copies of all decrees and orders, previously to the same being placed among the records of the court, *8d.*

The last preceding observation, applies also to this fee.

*N. B.* Calendars are made and preserved of all decrees and orders without fee or reward.

- 9th. For each roll, consisting of ten folios of seventy-eight words each, of all inrolments of decrees and orders of the court, *6s. 8d.*

This fee is as ancient as the preceding fees, but no service is performed by the Queen's Remembrancer in respect of the same; but is a moiety of the whole fee charged for the service by the sworn and side clerks in the Queen's Remembrancer's Office.

H. W. VINCENT, Q. R.

*Note.*—It is to be observed, that all the fees herein mentioned as payable to the Queen's Remembrancer are now received by him on account of the public, and constitute a fund out of which the general salaries and expenses of his office are partially paid. H. W. V.

## MEETING OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

### PRACTISING AS ADVOCATES IN LOCAL COURTS.

A NUMEROUS Meeting of the Attorneys and Solicitors of Ireland took place on the 11th instant, at the Chambers of the Law Society of Ireland, in consequence of the following requisition:—

"It being announced that it is in the contemplation of a great number of the members

of the Irish bar to apply to the legislature for an enactment authorising the allowance of fees for counsel in proceedings by civil bill; and as such a measure would in effect unnecessarily subject the suitors in courts of quarter sessions to oppressive costs, and be in direct contravention of the principles which have hitherto influenced legislation with respect to proceedings in these courts, and would also operate as an unjust encroachment upon the rights of our profession; we the undersigned attorneys of Ireland do hereby request a meeting of our brethren, to be held at the Chambers of the Law Society, on Saturday next, at the hour of three o'clock, for the purpose of adopting measures to oppose such a proceeding, and defend the interests of the public and the rights of the profession."

Mr. *Edward O'Beirne*, presided; and Mr. *Bolton*, the Secretary to the Irish Law Club, and Mr. *Fowler*, the Secretary of the Irish Law Society, were appointed Joint Secretaries.

Mr. *Ford* said.—A wise man of Greece was asked what was the best mode of government? His answer was, that mode under which an insult to the humblest individual is considered an insult to the whole body. He was glad that the wisdom of the wise man of Greece had descended on them, and that when an invasion of their rights had been attempted, those who practised in the higher courts shewed that they considered it an invasion of the rights of the whole body. It was time for the attorneys of Ireland to show a united front, because their privileges had been from time to time invaded, and those situations, which of right belonged to them, were taken from them and given to the members of the bar. Why that was the case appeared strange. Their habits of business, their education, their standing in the country, and the confidence that must necessarily be reposed in them as attorneys, were guarantees that they would fill their situations well. It was always a matter of wonder to him why their rights had been invaded; unless it was that, standing apart from each other and not shewing an united front, they had, like reeds, been broken one by one. He understood that the bar of Ireland, or rather a portion of the bar, deemed it expedient that the suitors in the sessions courts should have their assistance. He could not conceive,—when the sessions attorneys had made their court respectable, when they had discharged their duties faithfully, when the public had not complained of them, but had placed confidence in them for half a century as their advocates in those courts,—he could not conceive how it was expedient for the barristers to enter those courts. Those who know the practice in the sessions courts, and are acquainted with the suitors and their habits, know that the remuneration allowed by statute to the attorneys is no remuneration for the labour, talent, and information of the advocate; but they are also aware of this, that it is quite commensurate with the ability of the suitors to pay; but because the suitors are unable to pay, the expenses are quadrupled upon them, in order that they may have the

assistance of barristers. He must say, that contrasting the barristers' habits of business with theirs, their coming into the lower courts would not be attended with increased benefit to the administration of justice. He must also say, that their coming to the resolution that it was expedient for them to do so, implied a direct insult on the people now practising—for why should it be expedient for barristers to go there if the business was efficiently done without them? In Ireland, the barristers never practised at the quarter sessions; but they now say, our brethren in England practise at quarter sessions, and receive half-guinea fees, and why should not we? To this he would answer, that they had never in this country practised in these courts as a body, and why should they go there now? The barristers in England went to the quarter sessions, because rich England could afford to give them a half-guinea fee. But he would ask, could the suitors here afford to pay one farthing after they had given the attorney his small remuneration? Beside, the courts were not the same; the whole tendency of legislation had run against barristers taking any fees in the quarter sessions' courts. In the Ejectment Act it was specially included that fees could not be taxed for them. They were allowed a ten shilling fee at a very early period; but that had been confined to the city of Dublin, and when gentlemen of the bar had been employed at sessions. What was the cause of this new-born zeal? Had not the Irish bar enough of public property and patronage among them? Were not 110 situations, producing 170,000*l.* a-year, sufficient excitement for the ambition and zeal of these gentlemen? Having that, why should they look for more? It pleased the government to say that they should have some one to represent them at the sessions; they therefore appointed thirty-two attorneys as the sessions solicitors. The government found the attorneys discharged their duties properly, and they gave them that small appointment; but even that the bar begrudged them; even that, say they, we must get. If this situation had not been given, their intention of coming to the sessions would never have been heard of.

Mr. Watt said he did not consider this a question between the bar and the attorneys, but between the bar and a very important part of the public. A question more deeply involving the interests in Ireland had never been agitated. He trusted that anything which fell from him would not be misconstrued by the high-minded portion of the bar, who, he was sure, had nothing to do with this matter. He was confident that there did not proceed from them any intention to saddle the poorer classes with an additional fee, when the services of counsel were not required at all. The sessions court had been lauded by Lord Brougham and others. There were practising in them men as high in character and professional knowledge as any others. He considered that it would interfere with the ends of justice if the bar was to be foisted upon the public, when the public had not called for them to come to these courts.

He respectfully put it in that way—if the public, or even any section of the public, said—"Our business is not properly done; we cannot place confidence in these men; they do not belong to the respectable families of the country; we cannot consult with them;"—then it would be right for the bar to come forward, because the public would have called for them. He was sure that if the united opinion of the assistant barristers were asked, they would be against the bar coming into their courts. He had no personal interest in the matter, for he did not practise in those courts; but he felt that if 10*s.* 6*d.* is to be added to the defendant's costs of a decree, it will be a very heavy burden. Mr. Watt concluded by saying that it was a melancholy thing that the Irish barristers were looking not for the 10*s.* 6*d.* which the English barrister gets, but only for the fifteen pence, the half of the 2*s.* 6*d.* given by statute to the attorney. He trusted that the high-minded portion of the bar would advise their younger brethren that they should not,—no matter what they suffered from want of practice,—increase the burdens of the poor, and bring degradation on the profession and on themselves.

Mr. Cantuwell said, it was quite unnecessary for him to detain them. He would commence by reading the resolution. He then read the resolution, the purport of which was, that those who originated the proposal of going into the inferior courts were as forgetful of their own dignity and interests as they were reckless of the rights of the attorney, and that the attorneys expected the co-operation of the respectable members of the bar, and of the public in general. He thought that the leading object of the resolution was to distinguish the barrister who only sought the rewards to which his profession, his mind, and his knowledge, entitled him, from the barrister who, pressed by his necessities, adopted any shift to procure himself promotion. The first question here was between the bar and the poorest portion of the public. By an arithmetical calculation they would discover, to some extent, the burden which this measure would lay on the litigation of the poor man. There were thirty-two counties in Ireland, and there were, say 6000 civil bills in each county in the year; that would be, in the first place, for the lawyer, 6000 half guineas, or 3000 guineas—multiply that by 32, and they would have no less a sum taxed on the poor in the civil bill courts than 96,000 guineas a-year. He would ask was the country prepared for such an increased expense as that? Was the poor man prepared to pay it? But further, out of the 6000 civil bills, about 2000 would be defended, and that would be another thousand guineas a-year in each county, making 32,000 guineas a-year for defences going into the pockets of the bar; and adding the 32,000 to 96,000, they would have 128,000 guineas per annum increased expense on the poor man's law, and that was without taking into account ejectment cases. He thought that the fee allowed to lawyers on ejectment proceedings would, in quarters not

necessary to particularize, be a great inducement to bring ejectment litigation on the poor, for the purpose of putting a paltry fee in the counsel's pocket. He was glad to say that the majority of the bar was not engaged in this enterprise; not more than thirty attended at the late meeting, they got some respectable names to the requisition; but it was well known how requisitions were got up. They go back to an obsolete statute, the 2nd Geo. 1, and say that then they were entitled to have a fee of 10s. 6d. The attorneys of that time were not

as well qualified as those of the present day; and the act stated that no person should be obliged to retain, or have his or her bill signed by counsel in the civil bill court; and if a barrister received five pounds, no more could be taxed for such counsel than 10s. They had every respect for the law, but they would also respect, and make others respect, their own rights.

Mr. *Hinds* seconded the resolution, which passed unanimously.

## ATTORNEYS APPLYING TO BE ADMITTED

*In Michaelmas Term, 1839.*

### QUEEN'S BENCH.

#### *Clerk's Name and Residence.*

Anderson, Thomas Frederick, 16, Gray's Inn Square.  
Adney, Frederick, 10, Compton Street, Brunswick Square; and Poole, Dorset.  
Arthur, Edward, 30, Surrey Street, Strand; and Plymouth.  
Allen, Benjamin Tuthill, 31, Wakefield Street, Burnham; and Chapel Street.  
Awdry, Frederick, 46, Gloucester Street, Queen Square; and Chippenham.  
Booth, Charles Brook, 6, Canterbury Buildings, Lambeth.  
Bell, Adam, Stretford; and Manchester.  
Brownell, James, Altrincham.  
Baines, John George Fuller, 6, Featherston Buildings; and Needham Market.  
Beaton, Charles, 45, Gower Place; and Bath.  
Bennett, William Woolley Leigh, 20, Judd Place, West, New Road; and Buckingham.  
Bluck, Edward, 25, Lincoln's Inn Fields; and Manchester.  
Bullock, John Henry, Manchester.  
Brown, William, Manchester.

Bartlett, Robert Henry William, 29, Kenton Street; Shepton Mallett; New Millman Street; and Southampton Row.  
Bonsall, John George William, 67, Lamb's Conduit Street; and Aberystwith.  
Bartlett, Alfred Durling, 9, Victoria Terrace, Southwark; Reading; and Theobald's Road.  
Briggs, William Sturgess, 55, Lincoln's Inn Fields.  
Boyson, John Robert, 31, Beaumont Street, Marylebone.  
Bailey, Elijah Crosier, Norwich.  
Bowden, James, 43, Lincoln's Inn Fields; and Elm Court.  
Bramley, Thomas Charlesworth, 3, Camden Terrace, Kentish Town; and South Square.  
Braithwaite, Francis, the younger, 7, Manchester Street; and Liverpool Street.  
Baker, John Howard, Birmingham.

Cross, Seth, 16, Trinity Terrace, Southwark; and Barnsley.

#### *To whom articulated, assigned, &c.*

Anderson, George, Ludlow; assigned to Wilton, George Pleydell, Gray's Inn.  
Aldridge, Henry Mooring, Poole.

Eastlake, George, Plymouth.

Whitaker, Alfred, Frome.

Awdry, West, Chippenham.

Holmer, George, Bridge Street, Southwark.

Lane, John, Manchester.

Pass, William, Altrincham.

Hayward, Frederick, Needham Market.

Cook, Robert, Bath.

Hearn, Thomas, Buckingham.

Rodgers, Robert, Liverpool; assigned to Morris, John, Manchester.

Thompson, Alexander, Manchester.

Maychell, Richard, Bolton-le-Moors; assigned to Chew, Wm. Christopher, Manchester; assigned to Myers, Wm. Hugh, Manchester.

Craddock, Samuel, Shepton Mallett; assigned to Michele, Edward Shepton Mallett.

Parry, John Thomas Herbert, and Attwood, John Jones, Aberystwith.

Bartlett, Robert, Reading.

Briggs, Thomas, Lincoln's Inn Fields.

Gatty, Edward, 2, Red Lion Square.

Winder, James, Norwich.

Tooke, William, Bedford Row; assigned to Hunt, William Ogle, Whitehall.

Shoubridge, Charles John, South Square.

Rawson, George, Nottingham; assigned to Parke, James, Lincoln's Inn Fields.

Underhill, Richard, Birmingham; assigned to Wills, William, Birmingham.

Newman, Edward, Barnsley.

*Clerk's Name and Residence.*

Cheeshyre, Charles John, Shepherd's Bush.  
 Colley, William, 16, Belgrave Street, St. Pancras; and Boston.  
 Cooper, John Martin, Bishopwearmouth.  
 Clayton, Sykes, Sherburn and Kippax, York; and Strand-on-the-Green.  
 Childe, Harry Joseph, Warwick.  
 Charlesworth, Thomas Mitchell, 3, George Street, Tower Hill; Wakefield; and Horbury Bridge.  
 Cheesbire, Barnabas the younger, 18, Tavistock Street, Bedford Square; Birmingham; and Alfred Place.  
 Cleverton, Frederick William Pougett, 16, Garnault Place; Plymouth; Princes Street; and Union Place.  
 Collyns, Davenport Welch, 39, Lamb's Conduit Street; Exeter; and New Millman Street.  
 Capron, Thomas William, 9, New Burlington Street.  
 Coleman, Samuel, 75, Judd Street; Norwich; and Bucklersbury.  
 Comins, Richard, 16, Huntley Street; Great Portland Street; and Witheridge.  
 Coulton, John James, the younger, King's Lynn.  
 Dewes, Henry, 3, Chrysale Road, Kennington; Toleshill near Coventry; and Queen Street.  
 Davies, William Brissett, 63, Connaught Terrace.  
 Drew, Henry Richard, March.  
 Donald, John Reed, Liverpool.  
 Downing, Francis, 16, Southampton Street, Bloomsbury.  
 Dymock, Robert Myddleton, Ellesmere; and Whitchurch.  
 Evans, John, the younger, 3, Charlotte Street West, Pentonville.  
 Ellison, Richard, 28, Chichester Place; King's Cross; Sheffield; and Stone.  
 Ebdon, John, 3, Upper North Place, Gray's Inn Road; Fressingfield; and New Norfolk Street.  
 Eyre, George Lewis Phipps, 17, Great Russell Street, Bloomsbury; and Bishop's Waltham.  
 Fairthorne, Edward Falkener, 44, Queen Square; Hemel Hempstead; and St. Alban's.  
 Fairbank, David, Darlington.  
 Francis, Frederick, 10, Hunter Street; and Bellericay.  
 Gardner, William, 29, Hart Street, Bloomsbury; Carmarthen; Soley Terrace; Goulden Terrace, and 40, Carey Street.  
 Gibbs, Thomas, 4, Manchester Street, Gray's Inn Road; and Bath.  
 Gace, Langley, 3, Charlotte Street, Bloomsbury.  
 Gillam, Edward, Worcester.  
 Goode, Philip Benjamin, 7, Cork Street; and Howland Street.

*To whom articulated, assigned, &c.*

Fleetwood, John William, Penkridge, assigned to Manning, Frederick John, 2, Dyer's Buildings.  
 Staniland, Meaburn, Boston.  
 Thompson, Thomas, Bishopwearmouth; Ranson, George Smith, Bishopwearmouth.  
 Broch, Beauvoir, Loughborough.  
 Shipton, Joseph, Warwick; assigned to Buck; William Edward, Warwick.  
 Sykes, Edward, Wakefield.  
 Rawlins, John, Birmingham.  
 Kelly, John, Plymouth.  
 Gidley, John, Exeter.  
 Capron, George, 9, New Burlington Street; assigned to Loftus, Thomas, New Inn.  
 Ruckham, Matthew, Norwich; assigned to Hudson, George, Bucklersbury.  
 Loosemore, Robert, Tiverton; assigned to Clapham, William Henry, Great Portland Street.  
 Coulton, John James, the Elder, King's Lynn.  
 Dewes, Richard, Coventry.  
 Stephen, Sir George, King's Arms Yard.  
 Matthews, Richard, March.  
 Faircloth, George Frederick, Liverpool.  
 Merriman, Thomas Hardwick, Southampton Street; assigned to Smith, William Wyke, Southampton Street.  
 Harper George, Whitchurch.  
 Davies, David, Leicester Square.  
 Haywood, Joseph, Sheffield.  
 Hazard, William, Redenhall with Harleston.  
 Gunner, William, Bishop's Waltham.  
 Day, Frederick, Hemel Hempstead; assigned to Fairthorne, Thomas, St. Albans; assigned to Pocock, Thomas, Bartholomew Close.  
 Allison, George, Darlington and Richmond.  
 Shaw, George, Bellericay.  
 Morris, Lewis, Carmarthen.  
 Dowding, Frederick, Bath.  
 Lucas, Frederic, Louth.  
 Gillam, Robert, the younger, Worcester.  
 Goode, Philip, Howland Street; assigned to Pike, John, Golden Square.



*Clerk's Name and Residence.*

Hodgkinson, Grosvenor, 19, Judd Place; and Newark-upon-Trent.  
 Hughes, Seneca, 7, George Street, Minories.  
 Hillier, Henry Jenner, 16, Southampton St., Bloomsbury; and Marlborough.  
 Hunter, John, 6, Frederick's Place, Old Jury; and Newcastle-upon-Tyne.  
 Hooper, Alfred Catchinayd, 31, Amwell St.; Clifton; and Sidmouth Street.  
 Hussey, John, 104, Great Russell Street; Lyme Regis; and Poole.  
 Hill, Alfred Wither, Worthing.  
 Hellawell, John Beaumont, Huddersfield.  
 Hancock, John Cree, 30, Basinghall Street; and Exeter.  
 Hopper, Edward Lythgoe, Elm Cottage, Thistle Grove, Old Brompton; and 21, Essex St.  
 Hope, Thomas, 1, Heathcote Street, Mecklenburgh Square; and Wells.  
 Inglesant, Joseph, 95, York Road, Lambeth.  
 Jacobs, William, 26, Gloucester St., Queen Square; and the Charterhouse.  
 Jessopp, Francis Johnson, 8, Charlotte Street, Bloomsbury; and 10, Down Street.  
 Jervis, George Mathewman, 34, Claremont Square; and Sheffield.  
 King, Davis Porter, 7, Rosoman Buildings, Islington; Buckingham; East Street and River Street.  
 Lowe, Francis, 11, Montague Street, Russell Square.  
 Leighton, Thomas, 1, Soley Terrace, Lloyd Square; and Cheltenham.  
 Longcroft, Charles John, 29, Arundel Street; and Hewant.  
 Lee, Robert Paramor, Sandwich.  
 Lawley, Frederick, Rugeley.  
 Lowe, Richard, Sleaford; and Uttoxeter.  
 Lowry, Joseph Stamper, 41, Ely Place; George's Terrace; Crosby-upon-Eden; and Poland Street.  
 Marratt, William, the younger, 36, Frederick Street, Gray's Inn Road; and Doncaster.  
 Morgan, James Arthur, 6, Highbury Place, Islington.  
 Marsh, John Fitchett, 40, Sidmouth Street; and Warrington.  
 Metcalfe, Frederick, 5, Lincoln's Inn New Square; 33, Portland Place; and Fitzroy Sq.  
 Moultrie, Charles, 35, Lincoln's Inn Fields.  
 Macdonald, Henry Robert, 55, Hatton Garden; Nottingham; Buckingham; and Leicester.  
 Maples, Samuel, 51, Great Queen Street, Lincoln's Inn Fields; and Nottingham.  
 Neville, Charles James, Boultham, Lincoln.  
 Newman, Richard, 17, Jewin Crescent; and Guildford Street.  
 Nicholson, John, 18, Tavistock Street, Bedford Square; and Hawkshead.  
 Nodes, Stephenson, 16, Upper Bedford Place, Russell Square.

*To whom articulated, assigned, &c.*

Hodgkinson, George, Newark-upon-Trent.  
 Hughes, William, George Street.  
 Halcomb, John, Marlborough.  
 Pybus, John Anderson, Newcastle upon-Tyne.  
 Osborne, Robert, city of Bristol.  
 Parr, Robert Henning, Poole.  
 Cole, John, Odiham.  
 Barker, William, Huddersfield.  
 Terrell, John Hull, Exeter; assigned to Terrell, Hull, Basinghall Street.  
 Lythgoe, Joseph, Essex Street; assigned to Martin, Thomas, Essex Street.  
 Hope, Benjamin, Wells; assigned to Meredith, James Beaven, Heathcote Street.  
 Harrison, Thomas, Walbrook.  
 Barbor, Robert, Fetter Lane; assigned to Gough, Francis John, East Street; assigned to Nation, Richard, Somerset Street.  
 Burnaby, Thomas Fowke Andrew, Newark-upon-Trent; assigned to Tallents, William Edward, Newark-upon-Trent; assigned to Tallents, Godfrey, Newark-upon-Trent.  
 Vickers, Henry, Sheffield.  
 King, John, Puckingham; assigned to Kennedy, Thomas, Chancery Lane.  
 Lowe, William, Tanfield Court.  
 Newman, Edmund Lambert, Cheltenham.  
 Longcroft, Charles Beare, Hewant; assigned to Bromley, William, Gray's Inn Square.  
 Lee, William Sandwich.  
 Salt, Charles, Rugeley.  
 Flint, Abraham, Uttoxeter; assigned to Blugg, Francis, Uttoxeter.  
 Jackson, Henry, Kirkhy Stephen; assigned to Carrick, William, Brampton.  
 Mason, Thomas Blackwell, Doncaster.  
 Carr, John, Bedford Row; assigned to Tooke, Arthur William, Bedford Row.  
 Wagstaff, Joseph, Warrington.  
 Metcalfe, Thomas, New Square.  
 Powell, John Allen, New Square.  
 Rawson, George, Nottingham; assigned to Hole, Richard, Leicester.  
 Sculthorpe, Robert, Nottingham.  
 Bridges, John, 23, Red Lion Square.  
 Kingsbury, Matthew Brettingham, Bungay; assigned to Cobbold, Jno. Chevallier, Ipswich; assigned to Cobbold, Alfred, Chancery Lane.  
 Slater, John, Hawkshead.  
 Jones, John Oliver, John Street; assigned to Philpot, John, Southampton Street.

*Clerk's Name and Residence.*

*To whom articulated, assigned, &c.*

Oliver, John Bass, 2, Field Court; Newark-upon-Trent; and Great Russell Street.

Burnaby, Thomas Fowke Andrew, Newark-upon-Trent.

Ord, Charles Ovington, 39, Upper Stamford Street; and York.

Clarke, Henry, Guisborough.

Overton, James, 7, Charlotte Street, Bloomsbury; and Fakenham.

Overton, John, Fakenham.

Philips, Charles Frederick, 24, Downing Street; and Newnham.

James, John, the younger, Newnham; assigned to Leman, James, Lincoln's Inn Fields.

Pilgrim, John Thomas, 39, Gower Place, Euston Square; and Atherstone.

Power, Henry, Atherstone.

Pickering, Joseph Henry, Derby; and 2, Old Millman Street.

Flewker, John, Derby.

Parrott, William, 42, Spencer Street, Northampton Square; Stony Stratford; and Belgrave Street.

Southee, Robert, Ely Place; assigned to Worley, Edward Augustine, Stony Stratford.

Palmer, William Henry, 2, Old Millman Street; and Doncaster.

Palmer, William, Doncaster.

Preston, Charles, 17, Jewin Crescent; and Yarmouth.

Preston, Isaac, the younger, Yarmouth.

Prothero, Charles, 23, Norfolk Street, Strand; and Newport.

Philips, Thomas, the younger, Newport.

Portmore, Charles Broadhurst, Derby; Warwick Court; and Ashby-de-la-Zouch.

Fisher, Edward, Ashby-de-la-Zouch; assigned to Dewes, William, Ashby-de-la-Zouch.

Paxon, Francis, Hampstead.

Taylor, Gustavus Thomas, Featherstone Buildings.

Polydore, Henry, Cheltenham.

Newman, Edmund Lambert, Cheltenham.

Pinckney, George Henry, East Sheen.

Hillier, Edward, Raymond Buildings.

Plews, Thomas, 16, Trinity Square, Newington.

Lawrance, Edward, Bucklersbury.

Percival, Andrew, 39, Wakefield Street; and Peterborough.

Gates, John, Peterborough.

Roberts, Frederick Rowland, 14, St. Thomas Street, East Southwark; and Aberystwyth.

Hughes, Horatio, Aberystwyth.

Rayer, Edward, Cheltenham.

Straford, Joseph Cooper, Cheltenham.

Riccard, Russell Martyn, 43, Southampton Buildings; and South Molton.

Riccard, James Edward Jackson, South Molton.

Robinson, Thomas, 20, Baker Street, Lloyd Square; Cockerton near Darlington; and 36, Norfolk Street.

Rymer, William, Darlington.

Rigge, Thomas, 20, Sidmouth Street.

Moser, Robert, Kendal.

Robinson, Henry, 2, Snow Hill; Sheffield; and Whittington.

Thomas, Wotton Byrchinslaw, Chesterfield; assigned to Brown, John, Sheffield.

Sherland, George Edward, Bath.

Physick, John, the younger, Bath.

Stone, John, 6, Frederick's Place, Old Jewry; and Bath.

Mant, Henry John, Bath.

Salomon, Joseph Constant, 7, Windmill Street, Fitzroy Square.

Booth, George, 4, Newman Street; assigned to Adils, Charles, Great Queen Street.

Smith, James Knight, Gloucester; and Newnham.

Chadborn, Clement, Newnham; assigned to Elliott, Thomas, Newnham; assigned to Chadborn, John, Gloucester.

Salmon, George, 14, Everett St.; Thornbury; and 1, Soley Terrace.

Lloyd, Edmund, Thornbury.

Stevens, Charles, the younger, 13, Clifford's Inn; and Kensington Gore.

Dongan, James, Symond's Inn.

Sheppard, Thomas James, 49, Spencer Street, Northampton Square; and East Stonehouse.

Wingate, Francis Phillip, East Stonehouse.

Sparke, Jas. Bird, 13, Warwick Court, Holborn

Goddard, Godfrey, Wood Street; assigned to Harrison, Frederick, Bloomsbury Square.

Salmon, William, Bury Saint Edmund's; and Norfolk Street.

Munn, Sturley, Ixworth; assigned to Weyman, Harry, Bury St. Edmund's.

Stevens, Frederic, 49, Old Broad Street; and Great Russell Street.

Stevens, William, Queen Street, Cheapside.

Strick, Edward, 26, Gloucester Street, Queen-Square; and Swansea.

Williams, John, Swansea; assigned to Price, John Jackson, Swansea.

Snell, George Wells, Launceston.

Morgan William Thalesen, Launceston.

Simpson, George Septimus, 39, Wakefield St., Brownlow Street; and Peterborough.

Atkinson, Thomas, Peterborough; assigned to Morris, Evan, Temple.

- Smith, Robert, 10, Chapel Place, Vere Street.  
 Twining, Daniel, the younger, Bedford.  
 Thompson, John, 19, Compton Street, Shrewsbury; and 18, Castle Street.  
 Tuson, Henry, the younger, 15, Great Russell Street; and Northover.  
 Teale, William, 98, Upper Stamford Street; and Leeds.  
 Tillett, Jacob Henry, Norwich.  
 Turner, Wm. Cullen, 31, Bartlett's Buildings; Wantage; Shepton-on-Sherwell; and Southampton Buildings.  
 Tomlin, Ottiwell, the younger, 30, Mornington Place; and Richmond.  
 Twisden, Thomas Edward, 50, Burton Street, St. Pancras; Halberton; Gloucester Street; and Woburn Buildings.  
 Vyner, Charles James, 33, Southampton Row; Wigan; Lincoln's Inn Fields; and Norfolk Street.  
 Wight, Thomas, Kinswinford; and Dudley.  
 Wormald, William, Leeds.  
 Wells, William, 52, Gloucester Steeet, Queen Square; Dursley; and Arundel Street.  
 Williams, Lewis Walter, Walbrook.  
 Walker, Willoughby Newton, 14, Bedford Sq.  
 Worsley, Jonathan, Sanctuary, Westminster; and Woodbridge.  
 Watson, George Henry, York.  
 Watson, Richard T. Rundle, 25, Princes Street, Cavendish Square.  
 Yetts, Joseph Muskett, 5, Warwick Court; Great Yarmouth; 3, Montpelier Row, South Lambeth.  
 Yockney, John, 20, Torrington Square.
- Dean, William, Guildford Street.  
 Pearse, Theed, the younger, Bedford.  
 Burley, Walter, Shrewsbury; assigned to Scarth, Jonathan, Shrewsbury.  
 Tuson, Henry, Northover.  
 Bar, Robert, Leeds.  
 Staff, John Rising, Norwich.  
 Ormond, William, Wantage.  
 Tomlin, Ottiwell, the elder, Richmond; assigned to Williamson, Jas., Verulam Buildings.  
 Partridge, James, Triverton.  
 Becke, Simon Adams, Lothbury.  
 Robinson, William, Dudley.  
 Beaver, Timothy, Wakefield.  
 Wells, William Bury, and Bishop, Henry, Dursley.  
 Clare, Ambrose, Frederick's Place, and 5, Broad Street Buildings.  
 Harrison, Edward, Southampton Buildings.  
 Carthew, Thomas, Woodbridge.  
 Hodgson, Thomas, York.  
 Ogle, George, Great Winchester Street.  
 Palmer, Nathaniel, Great Yarmouth; assigned to Jackson, Robert, Bedford Row.  
 Moseley, Thomas, 13, Bedford Street.

•\*. Some further Names, the notices of which were left late, will be added next week.

#### LIST OF NEW PUBLICATIONS.

Questions in Common Law, Equity, Bankruptcy, Criminal Law, and the Jurisdiction of all the Courts, with References to Blackstone and other Authorities, adapted to the Compiler's "Outlines of Law," and designed as well for the use of Students as to aid Solicitors in ascertaining the Progress of their Articled Clerks. By Robert Maugham, Secretary to the Incorporated Law Society. Price 5s. bound in cloth, or interleaved 6s. 6d.

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Secretary to the Criminal Law Commission. Royal 12mo. Price 14s. bds.

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A Treatise upon the Law and Practice of the Court for the Relief of Insolvent Debtors; with an Appendix, containing the Acts of Parliament, Rules of Court, Forms, and Tables of Costs. By Edward Cooke, Esq., of the Middle Temple, Barrister at Law. The 2d edit., much enlarged. Price 16s. bds.

The Law of Evidence: an Essay on the Rationale of Circumstantial Evidence; illustrated by numerous Cases. By William Wills. Price 10s.

## INCORPORATED LAW SOCIETY.

*Members admitted, May 1839.*

Mott, Thomas Samuel, Much Haddam.  
 Wade, Wm. Thomas, Great Dunmow.

## MASTERS EXTRAORDINARY IN CHANCERY.

*From April 23d to May 17th, 1839, both inclusive, with dates when gazetted.*

Perry, William, Liverpool. April 23.  
 Browne, Alfred Hall, Wolverhampton, Stafford. April 30.  
 Cope, William Rogers, Birmingham. May 10.  
 Tingle, John Thomas Browne, North Shields, Northumberland. May 14.  
 Moore, William, Leicester. May 14.  
 Lazonby, William, Wigton, Cumberland. May 14.

## DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

*From April 23d to May 17th, 1839, both inclusive, with dates when gazetted.*

Hemingway, Edward, and George Brooke Nelson, Leeds, Solicitors. April 23.  
 Blackburn, John, and Edwin Chorley Hopps, Leeds, York, Attorneys and Solicitors. April 30.  
 Williams, John and Richard Ford, Shrewsbury, Salop, Attorneys and Solicitors. April 30.  
 Saunders, Thomas, and Richard Comyn, Queen Street Place, Southwark Bridge, London, Attorneys and Solicitors. May 3.  
 Chattock, Thomas, and James Thomas Bolton, Solihull, Warwick, Attorneys and Solicitors. May 7.  
 Taylor, William, and William Thorn, Great Queen Street, Lincoln's Inn Fields, Solicitors and Attorneys. May 10.

## BANKRUPTCIES SUPERSEDED.

*From April 23d to May 17th, 1839, both inclusive, with dates when gazetted.*

West, Charles, Liverpool, Printer and Publisher. April 30.  
 Hole, Henry Frederick, Newport, Bishop's Tawton, Devon, Brewer. April 30.  
 King, Thomas Benjamin, King Street, Aldgate, London, Victualler. May 3.  
 Cue, Charles, Blackfriars Square, Saint Mary-de-Crypt, Gloucester, Retailer of Beer. May 10.  
 Dunn, Arthur, George's Row, City Road, Chemical Manufacturer. May 17.

## BANKRUPTS.

*From April 23d to May 17th, 1839, both inclusive, with dates when gazetted.*

Avens, John, Leeds, York, Stuff Merchant. *Battye & Co.*, Chancery Lane; *Lee*, Leeds. May 10.  
 Askham, James, Sheffield, York, Brewer. *Wilkinson*, Lincoln's Inn Fields; *Fernell*, Sheffield. May 14.  
 Bloomer, Joshua, Halesowen, Salop, Nail Manufacturer. *Parker*, Saint Paul's Church Yard, *Underhill*, Birmingham. April 23.  
 Brown, Thomas, Stockton-on Tees, Durham, Ship Builder. *Wood & Co.*, Corbet Court, Gracechurch Street; *Cloy*, Sunderland. April 23.  
 Bennitt, Louiza Moody, Sherbourne, Dorset, Milliner, Dress Maker, Haberdasher, and Hosier. *Milne & Co.*, Temple. April 26.  
 Best, Joseph, Bilston, Stafford, Victualler and Coach Proprietor. *Brown*, Bilston; *William-*

*son & Co.*, Verulam Buildings, Gray's Inn. April 26.  
 Bradley, John, Great Titchfield Street, Marylebone, Printer. *Graham*, Off. Ass.; *Harmen*, Bennett Street, Blackfriars Road. April 23.  
 Batten, Charles, Moreton Mills, near Wallingford, Berks, Paper Manufacturer. *Ogle & Co.*, Great Winchester Street. April 23.  
 Bayley, Richard, Macclesfield, Chester, Builder. *Williamson & Co.*, Verulam Buildings, Gray's Inn; *Wormall*, Macclesfield. April 23.  
 Braim, Joseph, jun., New Malton, York, Currier and Leather Cutter. *Smithson & Co.*, Southampton Buildings, Chancery Lane; *Smithson* Malton. April 23 & 26.  
 Briggs, Thomas, Newcastle upon Tyne, Wholesale and Retail Grocer and Tea Dealer. *Gibson*, Newcastle upon Tyne; *Swain & Co.*, Frederick's place, Old Jewry. May 3.  
 Bull, William, Lichfield, Cabinet Maker and Upholsterer. *Wyatt*, Lichfield; *Haslam & Co.*, Copthall Court. May 3.  
 Bach, Edward, Birmingham, Haberdasher. *Crowder & Co.*, Mansion House Place; *Ingleby & Co.*, Birmingham. May 7.  
 Burridge, Stephen William, Great Dover Road, Surry, Linen-Draper. *Whitmore*, Off. Ass.; *Sole*, Aldermanbury. May 17.  
 Barron, George, Davies Street, Berkeley Square, Builder. *Groom*, Off. Ass.; *Howell*, Hatton Garden. May 17.  
 Blaxland, Alexander, Sunderland, Durham, Merchant. *Swain & Co.*, Frederick's Place, Old Jewry; *Messrs. Wright*, Sunderland. May 17.  
 Burghart, Frederick, Clifford Street, Bond Street, Tailor. *Clark*, Off. Ass.; *Wright*, Golden Square. April 30.  
 Byron, Henry Huddleston, Lincoln, Corn Merchant. *Willis & Co.*, Tokenhouse Yard; *Mason*, Lincoln. May 17.  
 Cohen, Andrew, Magdalen Row, Great Prescott Street, Goodman's Fields, Wine and Beer Merchant. *Johnson*, Off. Ass.; *Spyer* [no residence gazetted]. April 30.  
 Cole, Thomas, Leadenhall Street, London, Stationer. *Abbott*, Off. Ass.; *Harmen*, Bennett Street, Blackfriars Road. May 3.  
 Chalk, John, Brighton, Timber Dealer. *Chalk*, Brighton; *Freeman & Co.*, Coleman Street. May 7.  
 Cunnew, James Habbit, Fenchurch Street, London, Victualler. *Belcher*, Off. Ass.; *Heathcote*, Coleman Street. May 17.  
 Collis, George, Romford, Essex, Ironmonger, Auctioneer and Appraiser. *Clark*, Off. Ass.; *Lafaty & Co.*, King Street, Cheapside. May 17.  
 Carter, Walter Robert, Newcastle-upon-Tyne, Ironmonger and Sadler. *Chartres*, Newcastle-upon-Tyne; *Shield & Co.*, Poultry. May 3.  
 Dawson, Charles, North Row, Covent Garden, Fruiterer. *Abbott*, Off. Ass.; *Brown & Co.*, Commercial Sale Rooms, Mincing Lane. April 26.  
 Davies, Martha, and Mary Jones, Taunton, Grocers, Tea Dealers, and Bacon and Cheese Factors. *Adlington & Co.*, Bedford Row; *Reeves & Co.*, Taunton. April 30.  
 Dalby, John Francis, late of Aston Road, Birmingham, and now of Birmingham, Scrivener. *Parker*, Exeter Street, Strand; *Smith*, Birmingham. May 14.  
 Dawson, John, Hanley, Stoke-upon-Trent, Stafford, Corn Dealer. *King*, Furnival's Inn;

- Cooper, Tunstall, Staffordshire Potteries. May 17.
- Ende, Pieter Van den, formerly of Bishopgate within, and now of London Wall, London, and also of Milton, Kent, Wool Merchant. *Graham*, Off. Ass.; *Appleby*, King's Road, Bedford Row. May 17.
- Elliott, John, Birmingham, Currier and Leather Seller. *Nicholls*, Cook's Court, Lincoln's Inn; *Lefevre*, Birmingham. May 17.
- Finister, George, Edmonton, Middlesex, Wine Merchant and Common Brewer. *Cannan*, Off. Ass.; *Wire & Co.*, Saint Swithin's Lane. April 26.
- Frankland, Wm., Liverpool, Hackney Coach and Car Proprietor, and Livery Stable Keeper. *Norris & Co.*, Bartlett's Buildings, Holborn. *Toushin*, Liverpool. April 30.
- Frith, Geo., Lower Whitecross Street, London, Statuary and Mason. *Alsager*, Off. Ass.; *Buchanan*, Basinghall Street. May 3.
- Goadsby, Charles, Liverpool, Carver, Gilder and Printseller. *Milne & Co.*, Temple; *Bent*, Manchester. May 10.
- Heilbronn, Isidore, Painswick, Gloucester, Wool Broker. *Groom*, Off. Ass.; *Ooerbury*, Friday Street. April 26.
- Hughes, Peter, Liverpool, Cotton Dealer. *Vincent & Co.*, Temple; *Jones*, Liverpool. April 26.
- Horney, Geo., Camomile Street, London, Callender and Packer. *Tarquand*, Off. Ass.; *Cutler*, Aldine Chambers, Paternoster Row. May 7.
- Hood, John Lionel, Princes Street, Leicester Square, and of Great Grimsby Lincoln, Rope Manufacturer. *Lackington*, Off. Ass.; *Mallock*, Southampton Street, Bloomsbury. May 7.
- Harris, Christopher Arthur, Bushey, Hertford, and of Great Grimsby Lincoln, Flax Spinner. *Graham*, Off. Ass.; *Mallock*, Southampton Street, Bloomsbury. May 7.
- Higginbotham, Francis, Nineveh, Birmingham, Butcher and Brewer. *Milne & Co.*, Temple; *Messrs. Hewick*, Birmingham. May 7.
- Johnston, Thomas, King's Place, Commercial Road East, Draper. *Green*, Off. Ass.; *Reed & Co.*, Bread Street, Cheapside. April 23.
- Knowles, Wm., Manchester, Linen Merchant and Commission Agent. *Johnson & Co.*, Temple; *Heron & Co.*, Manchester. April 23.
- Kendall, Henry, Liverpool, Lancaster, and of Birkenhead, Chester, Ironmonger. *Adlington & Co.*, Bedford Row; *Frodsham*, Liverpool. April 26.
- Lyne, Francis, Mark Lane, London, Wine Merchant. *Lackington*, Off. Ass.; *Druce & Co.*, Billiter Square. April 26.
- Lock, James, Bury St. Edmunds, Suffolk, Miller and Corn Dealer. *Leech*, Bury St. Edmunds; *Bromley*, South Square, Gray's Inn. April 30.
- Moresby, Christopher, Frome Selwood, Somerset, Scrivener. *Whittaker*, Frome, King & Co., Gray's Inn Square. May 17.
- M'Alister, John, Liverpool, Upholsterer and Cabinet Maker. *Taylor & Co.*, Bedford Row; *Lowndes & Co.*, Liverpool. May 17.
- Manton, John, Great Grimsby, Lincoln, Corn Merchant. *Wells*, Kingston-upon-Hull; *Tilsons & Co.*, Coleman Street. May 3.
- Miller, Alexander, Thayer Street, Manchester Square, Carver and Gilder. *Pennell*, Off. Ass.; *Hill & Co.*, Welbeck Street. May 10.
- Marshall, Mary, Southampton, Steam Engine Boiler Maker. *Walker*, Southampton Street, Bloomsbury; *Deacon & Co.*, Southampton. May 14.
- Meares, Thomas, Wein, Salop, Malster. *Barker*, Wem; *Cuff & Co.*, Half Moon Street, Piccadilly. May 14.
- Meyer, John Adrian, Great Tower Street, London, Merchant and Commission Agent. *Johnson*, Off. Ass.; *Templer & Co.*, Great Tower Street. May 17.
- Norris, William, Liverpool, Ironfounder, Anchor Smith, and Chain Cable Manufacturer. *Snowball*, Liverpool; *Johnson & Co.*, Temple. April 30.
- Poole, George Coombs, Lyme Regis, Dorset, Grocer. *Hillman & Co.*, Lyme Regis; *Contes*, Lincoln's Inn Fields. April 30.
- Parker, Thomas, Coventry, Ribbon Manufacturer. *Edwards*, Off. Ass.; *Hudson*, Bucklersbury. May 17.
- Rowe, Henry, Great Tower Street, London, Wine and Brandy Merchant. *Edwards*, Off. Ass.; *Trehern & Co.*, Leadenhall Street. May 10.
- Southby, Thomas Edward, New Basinghall Street and London Wall; also now or late of Beech Street, Barbican, Hatter. *Whitmore*, Off. Ass.; *Farrar & Co.*, Goddliman Street. April 23.
- Smith, George, Warwick Court, Holborn, Carpenter. *Alsager*, Off. Ass.; *Platts*, Southampton Buildings. April 23.
- Southall, John, Eardisland, Hereford, Victualler and Blacksmith. *Smith*, Chancery Lane; *Hammond*, Leominster. April 30.
- Surman, William, Cheltenham, Hackneyman and Horse Dealer. *White & Co.*, Bedford Row; *Whalley*, Cirencester. April 30.
- Skull, Frederick, High Wycombe, Bucks, Grocer and Cheesemonger. *Green*, Off. Ass.; *Hal-i-well*, Alfred Place, Bedford Square. May 14.
- Sharrocks, William, and John Sharrocks, Manchester, Machine Makers. *Hampson*, Manchester; *Adlington & Co.*, Bedford Row. May 14.
- Thompson, Joseph, Ambleside, Westmorland, Bobbin Manufacturer. *Wilson & Co.*, Kendal; *Addison*, Mecklenburgh Square. May 14.
- Webb, Richard James, Quadrant, Regent Street, Chemist and Druggist. *Pennell*, Off. Ass.; *Templer & Co.*, Great Tower Street. April 30.
- Wartnaby, Harry Ellis, and Henry Robinson, Wood Street, London, Silkmen and Warehousemen. *Gibson*, Off. Ass.; *Hardman*, New Broad Street. April 30.
- Yeomans, James, Sheffield, York, Fellmonger. *Fiddley*, Serjeant's Inn, Fleet Street. *Smith*, Sheffield. April 26.

## PRICES OF STOCKS.

Tuesday, 21st May, 1839.

Bank Stock, div. 7 per Cent. - - - - -	195½
3 per Cent. Reduced - - - - -	92½ a ½ a ½
3 per Cent. Cons. Annuities - - - - -	93½ a ½ a ½
3½ per Cent. Reduced Annuities - - - - -	99½ a ½ a ½
New 3½ per Cent. Annuities - - - - -	101 a 100½
India Stock, div. 10½ per Cent. - - - - -	250½
Ditto Bonds, 3 per Cent. - - - - -	36s. a 35s. pm.
South Sea Stock Div. 3½ per Cent. - - - - -	104½
3 per Cent. Cons. for Acct. 28th May - - - - -	93½
Exchequer Bills, 1000 <i>l.</i> a 2 <i>d.</i> and 1½ <i>d.</i>	
	34s. a 36s. a 33s. pm.
Do. 500 <i>l.</i> a 2 <i>d.</i> and 1½ <i>d.</i> 34s. a 36s. a 33s. a 36s. pm.	
Do. Small, a 2 <i>d.</i> and 1½ <i>d.</i> 34s. a 36s. a 33s. a 26s. pm.	

# The Legal Observer.

SATURDAY, JUNE 1, 1839.

— "Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## THE ESTABLISHMENT OF A RURAL POLICE.

THE commissioners\* appointed in 1836, to enquire as to the best means of establishing an efficient constabulary force in the counties of England and Wales, have made their first report, which is well worthy of general attention. It is full of curious information as to the state of crime in this country, and the recommendations with which it concludes are supported by evidence. We shall have frequent opportunities of recurring to it in future numbers, and we shall now commence a summary of its chief contents.

The commissioners directed their inquiries into—1. The prevention of offences. 2. The proceedings before trial by which the detection and apprehension of criminals may be rendered more certain. 3. The public service which may be obtained from such constabulary force, otherwise than in the preservation of peace. 4. The manner in which such force should be appointed and paid.

Their first endeavour was to obtain full and accurate information as to the state of crime in the rural districts; and they found that the returns of the persons prosecuted or convicted could not be relied on for this purpose. The calendar of prosecutions is usually relied on as the index of the state of crime, but the answers of the magistrates in many districts shew that this is a very erroneous guide. In many parts of the country many offences are committed, which

from various causes escape prosecution. Take, as an instance, the answer of General Marriott, a Magistrate of Pershore. "I fear" he says, "there is a great deal of crime (not heinous perhaps) which is not brought to light, from the want of police, and the unwillingness under such circumstances of the injured to prosecute. The river Avon winds through the whole extent of this district (eighteen miles), and the number of barges employed upon it gives great facility to plunder in the night time, and to escape detection; many of the barge-men being of the worst character. Since the magistrates have been engaged in answering these questions, the skin and entrails of a fresh killed sheep, were taken out of the river in an eel net, close to the town of Pershore; and although notice has been sent to all the neighbouring farmers, not one will own to having lost a sheep, for fear of being obliged to prosecute. They call it "throwing away good money after bad." Take also an answer from the borough of Lymington. "The individuals generally are indisposed to incur the expense, risk, and uncertainty of a conviction. In some cases, a fear of personal violence, or damage to property from combination among the thieves, deters parties from investigating robberies;" and from the city of Lincoln and other places, the answers concur in assigning to "the fear of vengeance," and injury from the depredators, a large proportion of the motives to withhold information.

The number of small depredations committed, which escape conviction, are in fact too numerous to remember. On a careful inquiry made amongst the habitual depredators confined in Cold Bath Fields Prison, by the governor, Mr. Chesterton, it was

\* The commissioners are the newly elected Speaker, Mr. Shaw Lefevre, Colonel Rowan, and Mr. Chadwick.

estimated by the class of pickpockets, that "one day with another" they must steal about six pocket handkerchiefs or things to the same value "to live," meaning to obtain the means of livelihood in such sort as to render a career of depredation more eligible to them than a livelihood by honest industry. The commissioners also endeavoured to ascertain the number of depredators in the great towns, and they estimated that in 1830, the average career of impunity in the metropolis was not less than six years, that the total number of habitual depredators tried was about 1000; and that the number of common thieves could not be less than 6000, offenders of all classes not exceeding about 18,000. It would seem from a table contained in the report, that the proportion of known bad characters to the population was, in the Metropolitan Police district, 1 in 89; in Liverpool, 1 in 45; in Bristol, 1 in 31; and in Newcastle-upon-Tyne, 1 in 27. Various other tables of this nature are given, and in the opinion of the commissioners they tend to shew the extent to which the legislature and the public have been misled by mere hypothetical statements. It would indeed seem that the number of criminals has been greatly over-estimated. For example, Dr. Colquhoun estimated the number of prostitutes in the metropolis at 50,000, and in a recent address published by a voluntary association the number of prostitutes is stated to be not less than 80,000. "The actual enumeration shews that at this time the number of known prostitutes living amidst a population of nearly a million and a half, does not exceed 7000."

The report next enters into a description of depredations committed, and the habits of the migratory depredators; and it seems to be satisfactorily proved that the great majority of burglaries committed in the country, are planned by thieves resident in London, Liverpool, Manchester, Birmingham, and other large towns. They are arranged in these great towns, and thither the booty is brought, and thus easily disposed of. The vigilance of the police in these towns prevents the execution of this crime and many others within their precincts, and drives off the offenders beyond their beat. The consequence of this is that many rural districts are much worse off than before the establishment of the police. Thus the governor at the House of Correction at Liverpool is asked "Is not robbery increased in the suburbs and other places out of the reach of the police?" "Yes,

there have been some very serious robberies in the suburbs, that were not so frequently heard of before. Generally speaking, I think property some few miles out of Liverpool was a few years back much more safe. There were not so many robberies there as there are at present in the suburbs." But perhaps the most curious portions of the report are the confessions obtained from various sources of many noted offenders, which shew to what a system robbery is reduced. We shall make some extracts which may not be useless to our readers:—

"Amongst thieves there are several kinds—1st. Those confined to picking pockets have boys to work for them, and close round them, that no one shall see them. This is very gainful; large towns furnish them, and they frequent all fairs, wakes, and races. They travel various ways, some with spring and covered carts. 'Muffling' the cart is of use only when there is no watchman; the wheels and horses' feet are all clothed. I have not heard of its being done this long time. 2d. Robbers of the person with violence:—mosty three together, two will hold the man, and the third rifle his pockets. All three will, perhaps, be behind when the attack is made, and one will put his arms round him, or he would hit him from behind with a stone in a handkerchief, or a heavy stick, to stun or 'drop' him, and when the plunder is got, throw him out of the way. If a man is in a gig, one will get behind, and get his arms round him and drag him out, or one will hold the horse and cut the reins. A horseman will do well to take to the fields, but in a gig a man has only the chance of self-defence; few 'travellers,' i. e. thieves, will venture their lives if a pistol is shown. Few 'travellers' are confined to one kind of robbing; in some places you will see the same persons with boys picking pockets, and others with a three-thimble table, gambling at fairs and races; it would be a good thing to stop it universally; they are thieves to a man; it would draw them to other things. My first turn out was in Manchester, about seven years since, with two young men who were transported about twelve months after I knew them (they had been at it eight or nine years before). one was called — and the other —, I believe they got seven years. This was my first turn out in Manchester; 'worked' about the coach-offices. I stole handkerchiefs and picked pockets then; got about a dozen a day; sometimes 'worked' only half a day; sold and pawned them—pawned most. A woman at the bottom of P—— Street would buy any quantity at 1s., 1s. 6d., and 2s.; she had a cellar for old clothes, and sold them openly. My first job of money was picking the pocket of a woman in the market, at a stall; got 8s. 3d. Turned out next with N—— R——, who had a bill out against him last week but one; he and I both lived at home, and used to go out then robbing clothes-lines of wet clothes. It is not a profitable branch. Pawned them

and sold them to persons we knew, who worked at factories. I did not do any thing bolder till I left Manchester, about three months after my father died, now between four and five years. I went away by myself to Liverpool, and thence direct to Dublin; I had pawned all my clothes. I went to some relatives of my mother at Navan, county of Meath, and stayed with them about three months; they used me kindly; I worked about their farm. I went thence to where my father had been a coachman at E——, Miss —— gave me 30s. to send me back to Dublin, that I might get home. I had no intention of returning at the time. I returned to Liverpool, having done nothing; I took a portmanteau off a steamer; I stole a passage, as they call it; I got in among some horses to which I was used, and when the steward had gone round, I turned out in the bustle. I escaped with the portmanteau, it produced altogether 2l. 5s. 6d. I sold them principally to B—— J——, in a street in Liverpool, full of lodging-houses for 'travellers.' I lodged at B—— H——'s, or next door in W—— C——, known for twelve or fourteen years. Returned to Manchester, got work for two months selling biscuits for a man, Mr. P——. I went off with 12s. worth to Liverpool. I went this time near Prince's Dock, as I knew not much about thieving. I took a place at 5s. a week in a trading vessel to go to London, as under-cook. I run away from her in the Isle of Man. I had received what was due. I got a passage over to Whitehaven, and then I began first shoplifting there about ten days. I got only about as much as would keep me, 3s. or 4s. of a night, butchers' meat or clothes; sold it where I stopped. I asked generally for a lodging-house, and found it was one where property could be sold. Came through Ulverston to Lancaster, got a top coat out of a coach under an opening; pawned it for 8s. Came through Garstang to Preston and Blackburn."

This is a short specimen of the life led by an itinerant thief, and the report contains much corroborative testimony as to the mode of life here described. Another thief says—

"I consider that in London or Liverpool or such places as have got the new police, there is little to be done unless it be picking pockets. People there think that they are safe under the eye of the new police, and will take large sums of money in their pockets. People in other places will send for a creditor, instead of taking the money."

The following hints from another thief may be useful to our female readers, who, we are happy to hear, are very numerous:

"Pocket-picking is called 'buzzing' and 'tooling,'—the former is men's, the latter 'women's.' Men's are done with wires made on purpose. Wireworkers that are bad characters will make them for 10s. a-piece; they

are like the wires for getting corks out of a bottle with three hooks in it; all the hooks incline inwards. There is a spring on the top and when you think you have got it, you touch it, and it closes like a crab's claw. These are very successful with those who are expert at using them—at cattle fairs on old country farmers. The female pocket is picked by the hand, and to do it the thief must get on her right hand, for the pocket is mostly on that side; he must get into step with her, and at the moment she advances her right leg, the pocket falls back—i. e. the leg goes forward, leaving the pocket perpendicular, and then he must extract the purse. He gets his left hand into the mouth of the pocket as she goes along, and then watches the moment. Another man is all along drawing her attention off by walking in her way and baffling her; then down goes the left hand, the right supports the bottom of the pocket, and the money is extracted. Walks away, except she has suspicion; then runs."

This experienced person obtained in this way 278l. in Liverpool from a foreign lady, which however, only lasted six weeks. *Esperanto crede Roberto!* We might amuse our readers with much further matter of this kind. In our next article we shall advert to the houses of accommodation used by migratory depredators. "If there were no receivers, truly there would be no thieves."

### ARREARS IN EQUITY.

We are glad to find that the public attention is being gradually aroused to the state of arrears in Equity, and we are not without hopes that some remedy may yet be applied. This, however, will not be obtained unless the profession and the suitors will bestir themselves. The session is fast slipping away, and it would seem that most of the public bills of importance will be shelved. We would venture to suggest, therefore, that a commission should be appointed to inquire into the present state of the business in the Court of Chancery and the obstructions to its dispatch. We should here follow the precedent of the commission appointed during Lord Eldon's Chancery-ship, and surely there is as much need for it now as then. The commission might take evidence during the time that Parliament was not sitting, and might be in a condition to report before the next meeting of Parliament. Some well considered measure might then be adopted, founded on their recommendations, and some hope might be held out to the suitor that his grievances would be redressed. We are sure that all party considerations would be put aside in



this great and useful inquiry, and that it might be composed of men in whom the public and the profession could have implicit confidence. Lord Lyndhurst brings on this subject on Tuesday next, the 4th of June.

## THE STUDENT'S CORNER.

**THE SPEAKER.**

ALTHOUGH chosen by the Commons, the Speaker must be approved by the king. Accordingly, Sir Edward Coke, upon being elected Speaker in 1592, in his address to the throne, declared it "no election until your Majesty giveth allowance and approbation." But in later times the House of Commons have not permitted their Speaker to draw their rights and privileges into question by any vague use of courtly language. Being chosen, the Speaker is presented to the King in the House of Lords, and for policy sake used to excuse, or as it is more quaintly expressed, to disable himself, and still express a diffidence of his capacity to exercise so great a trust. To the Speaker's excuse at his presentment, the Chancellor was accustomed to reply in an answer of compliment and encouragement, but now he shortly informs the Commons that his Majesty approves of their Speaker. The Speaker then claims the ancient privileges of the Commons. On his return to the Commons, the Speaker in the chair shall request the Commons "That inasmuch as they have chosen him for their mouth, they would assist him and favourably accept his proceedings." His principal duties are—1. Taking the chair, which he cannot do till there are at least forty members in the house, and adjourns the house of his own authority, without a question put, if forty members are not present. Also resuming the chair in the midst of a committee for the same reason. 2. Maintaining order, naming a member that is disorderly, thanking and reprimanding members and other persons.—*Lord Colchester's proceedings with the House of Commons.*

## NEW BILLS IN PARLIAMENT.

**EXCHEQUER OF PLEAS INQUISITIONS.**

**This is a bill "to enable justices of assize on their circuits to take inquisition of all pleas in the Court of Exchequer of Pleas, which shall be brought before them without a special commission for that purpose."**

It recites the statute Westminster 2, 13 Edw. 1, c. 30, by which the justices of assize on their several circuits are empowered to take inquisitions of all pleas in the Courts of Queen's Bench and Common Pleas: and whereas it is expedient to extend the said power to pleas in the Court of Exchequer, in

order to put an end to the practice which has hitherto obtained of issuing a separate commission from the said court upon each record brought therefrom before the judges of assize:

It is therefore proposed to be enacted, that from and after the passing of this act it shall be lawful for all justices of assize, and they are hereby authorized and empowered, on their respective circuits, to try causes and take inquisitions of pleas pending in the Court of Exchequer of Pleas which shall be brought before them, and to proceed thereon in like manner as they can or may do in respect of causes and pleas pending in the Courts of Queen's Bench and Common Pleas under and by virtue of the said act, or by any other law, statute, or usage whatsoever; and it shall not be necessary hereafter to issue any commission from the said Court of Exchequer of Pleas for that purpose.

## NEW ORDERS IN CHANCERY.

[Continued from p. 61, ante.]

## FORMS OF WRITS.

**No. 1.—*Writ of Fieri Facias, on a Decree or Order of the Court of Chancery for Payment of Money.***

**VICTORIA**, by the grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the faith.

To the Sheriff of greeting :

We command you that of the goods and chattels of *C. D.*, in your bailiwick you cause to be made the sum of £ , which lately before us in our High Court of Chancery, in a certain cause or certain causes, (*as the case may be*) wherein *A. B.* is plaintiff, and *C. D.* is defendant, or in a certain matter there depending, intituled, "in the matter of *E. F.*" (*as the case may be*), by a decree or order (*as the case may be*) of our said Court, bearing date the day of was decreed or ordered (*as the case may be*) to be paid by the said *C. D.* to *A. B.*; and that of the goods and chattels of the said *C. D.* in your bailiwick you further cause to be made interest upon the said sum of £ , at the rate of 4l. per centum per annum, from the day of :<sup>a</sup> and that you have that money and interest before us, in our said Court immediately after the execution hereof, to be paid to the said *A. B.* in pursuance of the said decree or order, (*as the case may be*): and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf; and in what manner you shall have executed this our writ, make appear to us in our said Court immediately after the execution thereof; and have there then this writ.

Witness ourself at Westminster, the  
day of            in the            year of our reign.

\* The day on which the decree or order was made, or, if that were prior to the 1st October, 1838, say, "from 1st day of October, 1838."

**No. 2.—Writ of Fieri Facias, on a Decree or Order of the Court of Chancery for payment of money and interest.**

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the faith.

To the Sheriff of \_\_\_\_\_ greeting:

We command you that of the goods and chattels of *C. D.*, in your bailiwick, you cause to be made the sum of £ \_\_\_\_\_, and also interest thereon, at the rate of 4l. per centum per annum, from the day of \_\_\_\_\_, which said sum of money and interest were lately before us in our High Court of Chancery, in a certain cause, or certain causes (*as the case may be*), wherein *A. B.* is plaintiff, and *C. D.* is defendant, or in a certain matter there depending, intituled, "in the matter of *E. F.*" (*as the case may be*) by a decree or order (*as the case may be*) of our said Court, bearing date the day of \_\_\_\_\_, decreed or ordered (*as the case may be*) to be paid by the said *C. D.* to *A. B.*, and that you have that money and interest before us, in our said Court immediately after the execution hereof, to be paid to the said *A. B.* in pursuance of the said decree or order, (*as the case may be*); and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf, and in what manner you shall have executed this our writ make appear to us in our said Court immediately after the execution thereof: and have there then this writ.

Witness, &c.

**No. 3.—Writ of Fieri Facias, on a Decree or Order of the Court of Chancery for Payment of Money and Costs.**

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen defender of the faith.

To the Sheriff of \_\_\_\_\_ greeting:

We command you that of the goods and chattels of *C. D.* in your bailiwick you cause to be made the sum of £ \_\_\_\_\_, which said sum of money was lately before us in our High Court of Chancery, in a certain cause, or certain causes (*as the case may be*), wherein *A. B.* is plaintiff, and *C. D.* is defendant, or in a certain matter there depending, intituled, "in the matter of *E. F.*" (*as the case may be*), by a decree or order (*as the case may be*) of our said Court, bearing date the day of \_\_\_\_\_, decreed or ordered (*as the case may be*), to be paid by the said *C. D.* to *A. B.*, together with certain costs in the said order mentioned, and which costs have been taxed and allowed by *G. H.* esquire, one of the Masters of our said Court at the sum of £ \_\_\_\_\_, as appears by the certificate of the said Master, dated the day of \_\_\_\_\_, and that of the goods and chattels of the said *C. D.* in your bailiwick, you further cause to be made the said sum of £ \_\_\_\_\_, together with interest at the rate of

4l. per certum per annum on the said sum of £ \_\_\_\_\_, <sup>d</sup> from the day of \_\_\_\_\_, <sup>e</sup> and on the said sum of £ \_\_\_\_\_, <sup>c</sup> from the day of \_\_\_\_\_, <sup>f</sup> and that you have that money and interest before us in our said Court immediately after the execution hereof, to be paid to the said *A. B.* in pursuance of the said decree or order, (*as the case may be*): and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf, and in what manner you shall have executed this our writ, make appear to us in our said Court immediately after the execution thereof: and have there then this writ.

Witness, &c.

**No. 4.—Writ of Fieri Facias, on a Decree or Order of the Court of Chancery for Payment of Money, Interest, and Costs.**

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the faith.

To the Sheriff of \_\_\_\_\_ greeting:

We command you that of the goods and chattels of *C. D.* in your bailiwick you cause to be made the sum of £ \_\_\_\_\_, and also interest thereon at the rate of 4l. per centum per annum, from the day of \_\_\_\_\_, <sup>g</sup> which said sum of money and interest were lately before us in our High Court of Chancery, in a certain cause, or certain causes (*as the case may be*), wherein *A. B.* is plaintiff, and *C. D.* is defendant, or in a certain matter there depending, intituled, "in the matter of *E. F.*" (*as the case may be*), by a decree or order (*as the case may be*) of our said Court, bearing date the day of \_\_\_\_\_, decreed or ordered (*as the case may be*) to be paid by the said *C. D.* to *A. B.*, together with certain costs in the said order mentioned, and which costs have been taxed and allowed by *G. H.* esquire, one of the Masters of our said Court, at the sum of £ \_\_\_\_\_, as appears by the certificate of the said Master, dated the day of \_\_\_\_\_, and that of the goods and chattels of the said *C. D.* in your bailiwick you cause to be further made the said sum of £ \_\_\_\_\_, together with interest thereon at the rate aforesaid, from the day of \_\_\_\_\_, <sup>h</sup> and that you have that money and interest before us, in our said Court immediately after the execution hereof, to be paid to the said *A. B.*, in pursuance of the said decree or order, (*as the case may be*): and that you do all such things as by the statute passed in the second year of our reign, you are au-

<sup>d</sup> The money.

<sup>e</sup> The date of the order, or, if that were prior to the 1st October, 1838, say, "from the 1st day of October, 1838."

<sup>f</sup> The date of the Master's certificate, or, if that were prior to the 1st of October, 1838, say, "from the 1st day of October, 1838."

<sup>g</sup> The day mentioned in the order.

<sup>h</sup> The date of the Master's certificate of taxation, or, if that were prior to the 1st October, 1838, say, "from the 1st day of October, 1838."

<sup>b</sup> The day mentioned in the order.

<sup>c</sup> The costs.



by whose oath you shall make the said extent and appraisement. And have there then this writ. Witness ourself at Westminster, &c.

No. 7.— *Writ of Elegit on a decree or order of the Court of Chancery for payment of costs.*

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen Defender of the faith.

To the Sheriff of greeting:

Whereas, lately in our High Court of Chancery, in a certain cause or certain causes (*as the case may be*,) there depending, wherein *A. B.* and others are plaintiffs, and *C. D.* and others are defendants, or in a certain matter there depending, intituled, "In the matter of *E. F.*" (*as the case may be*,) by a decree or order (*as the case may be*) of our said Court, made in the said cause or matter (*as the case may be*) and bearing date the day of , it was decreed and ordered, or ordered (*as the case may be*,) that *C. D.* should pay unto *A. B.* certain costs as in the said decree, or order (*as the case may be*,) mentioned, and which costs have been taxed and allowed by *G. H.* esquire, one of the Masters of our said Court, at the sum of £ , as appears by the certificate of the said master, dated the day of

And afterwards the said *A. B.* came into our said Court of Chancery, and according to the form of the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said *C. D.*, or any one in trust for him, was seized or possessed of, on the day of , in the year of our Lord ,<sup>m</sup> or at any time afterwards, or over which the said *C. D.* on the said day of ,<sup>n</sup> or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit; to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said sum of £ , together with interest thereon at the rate of 4l. per centum per annum, from the said day of , shall have levied. Therefore we command you, that without delay, you cause to be delivered to the said *A. B.* by a reasonable price and extent, all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands and tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of copyhold, or customary

tenure, in your bailiwick, as the said *C. D.* or any person or persons in trust for him, was or were seized or possessed of, on the said day of ,<sup>o</sup> or at any time afterwards, or over which the said *C. D.* on the said day of ,<sup>o</sup> or at any time afterwards had any disposing power, which he might without the assent of any other person or persons, exercise for his own benefit; to hold the said goods and chattels to the said *A. B.* as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said sum of £ , together with interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ, make appear to us in our Court of Chancery aforesaid, immediately after the execution thereof, under your seal and the seals of those by whose oath you shall make the said extent and appraisement. And have there then this writ.

Witness ourself at Westminster, &c.

No. 8.— *Writ of Elegit on a Decree or Order of the Court of Chancery, for payment of money and costs.*

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, defender of the faith.

To the Sheriff of greeting:

Whereas, lately in our High Court of Chancery, in a certain cause or certain causes (*as the case may be*) there depending, wherein *A. B.* and others are plaintiffs, and *C. D.* and others are defendants, or in a certain matter there depending, intituled "In the matter of *E. F.*" (*as the case may be*) by a decree or order (*as the case may be*) of our said court, made in the said cause or matter (*as the case may be*), and bearing date the day of , it was decreed and ordered, or ordered (*as the case may be*) that *C. D.* should pay unto *A. B.* the sum of £ , together with certain costs as in the said decree or order (*as the case may be*) mentioned, and which costs have been taxed and allowed by *G. H.* esquire, one of the masters of our said court, at the sum of £ . as appears by the certificate of the said Master dated the day of . And afterwards the said *A. B.* came into our said Court of Chancery, and according to the form of the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said *C. D.*, or any one in trust for him, was seized or possessed of, on the day of , in the year of our Lord ,<sup>p</sup> or at any time afterwards, or over

<sup>m</sup> The date of the Master's certificate of taxation.

<sup>n</sup> The date of the Master's certificate of taxation, or if that were prior to the 1st day of October, 1838, say "from the 1st day of October, 1838."

<sup>o</sup> The date of the Master's certificate of taxation.

<sup>p</sup> The day on which the decree or order was made.

which the said *C. D.*, on the said day of <sup>p</sup>, or at any time afterwards, had any disposing power, which he might, without the assent of any other person exercise for his own benefit; to hold to him the said goods and chattels, as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said two several sums of £ and £, together with interest upon the said sum of £ at the rate of 4l. per centum per annum, from the day of <sup>q</sup>, and on the said sum of £ at the rate aforesaid, from the day of <sup>r</sup> shall have been levied. Therefore we command you that without delay you cause to be delivered to the said *A. B.* by a reasonable price and extent, all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands and tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said *C. D.* or any person or persons in trust for him, was or were seised or possessed of, on the said day of <sup>s</sup>, or at any time afterwards, or over which the said *C. D.* on the said day of <sup>t</sup>, or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said *A. B.* as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said two several sums of £ and £, together with interest aforesaid, shall have been levied. And in what manner you shall have executed this our writ, make appear to us in our Court of Chancery aforesaid immediately after the execution thereof, under your seal and the seals of those by whose oath you shall make the said extent and appraisement. And have there then this writ. Witness ourself at Westminster, &c.

(To be continued.)

### SELECTIONS FROM CORRESPONDENCE.

#### UNQUALIFIED BANKRUPTCY PRACTITIONERS.

Sir,  
You are aware that the profession is already labouring under severe privations, on account of the various pretended reforms which have

<sup>q</sup> The day on which the decree or order was made, or in case it was made prior to the 1st of October, 1838, say "from the 1st day of October, 1838."

<sup>r</sup> The date of the Master's certificate of taxation, or if that were prior to the 1st day of October, 1838, say "from the 1st day of October, 1838."

<sup>s</sup> The day on which the decree or order was made.

of late years been introduced; and as it appears that mere accountants and other non-professional persons are now in the habit of undertaking and carrying to completion *bankrupts' certificates*, may I be allowed to ask of the profession through you, whether such persons are not, under the 10th sect. of the New Bankrupt Act, 1 & 2 W. 4, c. 56, guilty of a contempt of court, and liable to all the penalties incident thereto? and whether such a practice should not be immediately put a stop to?

AN OLD SUBSCRIBER.

#### LAW REFORM.

Sir,

IN Blaxland's *Codes Legum Anglicanarum*, 158, there is a note singularly applicable to the present times:—"Duclos, in his memoirs, relates that the Duc de Grammont one day stopped D'Aguesseau to ask him if he had no means of abridging law proceedings, and diminishing the expence. "I have often thought of it," said the (illustrious) Chancellor, "and I have even begun a regulation upon the subject, but I was stopped by the consideration of the number of *avocats*, attorneys, and officers of the Court I should ruin."

I am no friend to codification; it is specious in theory, wicked in practice; but I think Mr. Blaxland's work has great merit. The historical introduction is excellent, and the book is the best guide to the provisions of the *Code Napoleon* I know of. S. P.

[We take it that neither our respected correspondent nor the "illustrious" Chancellor mean that any laws can be framed which will dispense with lawyers in administering them. The proportion of the number of lawyers to the population of a country and its wealth will never diminish; but sweeping changes make sad havoc with individuals, although the aggregate number remains undiminished. Ed.]

#### ATTORNEYS WEARING GOWNS IN COURT.

Sir,

I happen to be in this town on a journey of business, and by way of passing, alike profitably and agreeably, the leisure hour which sometimes hangs heavy in the travels of a man who, intent on his own affairs, seeks no greater recreation than that which professional reminiscences and professional anticipations afford him, I slipped into my portmanteau, on my way through Bristol, the last number of the *Legal Observer*. In the cabin of the *Nautilus* I cut open your fraternal pages, and my attention was forthwith drawn to the letter of a Common Pleas Attorney on the subject of attorneys wearing gowns in Court; and I am bound to acknowledge that I coincide wholly and entirely with the observations which he has made to you on this point.

Sir, you are the great organ of our profession, and by your means much has been done to place the attorney (as such) in his proper position in society; but as a member of that body who, by virtue of their nice intercourse with mankind, know more of the sinuosities of the human mind than most, if not, all others,—

it cannot have escaped you that the world at large still retain that deference for the distinctions of society which should on all occasions be preserved, and which in most cases, as in the church, the bar, the army, &c. &c. are marked by variations of costume; and I cannot help adding my testimony to that of your correspondent, that it would be most advantageous to the interests of our profession that this distinction should not, as has too long been the case with us, be laid aside.

If you would mention this to the law public, and if the judges in their several Courts, and especially on circuit, would intimate to the attorneys that it was expected that they should pay that honour to the Courts of which they are officers, which has been always paid by the bar to the bench, I am morally sure, that trifling as the subject appears to be, much good would be effected, and a distinctive tone of feeling would arise amongst our profession, which does not now exist, tending alike to its greater respectability and influence with the public, and a greater unanimity amongst its individual members.

Cardiff, May 9th.

D.

## SUPERIOR COURTS.

### Vice Chancellor's Court.

#### PARTNERSHIP.—LUNACY.

*The lunacy of a partner is sufficient ground in equity to dissolve the partnership, and direct the accounts of the business to be taken up to the filing of the bill. Where the partner is declared lunatic under a commission, the Court will not require further proof by directing an inquiry before a master.*

This was a bill for dissolving a partnership, on the ground of the lunacy of one of the partners. It appeared, that in April 1835, Alexander George Milne the elder retired from a partnership in the business of merchants, carried on by him and William Bartlett for sometime previously, and a new partnership in the said business was then formed between Bartlett and Alexander George Milne, the younger, for seven years, and they agreed to pay A. G. Milne, the elder, an annuity of £200l. during that period, in consideration of his so retiring, and they executed to him a bond for securing such payment for the said period if they or either of them should so long live, and if one should die within that period that the survivor alone should pay the said annuity. By an inquisition of lunacy taken in March last, Mr. Bartlett was found to be of unsound mind from the month of June 1838, and his wife was appointed committee of his person and estate, by an order dated the 18th of April last. Alexander George Milne, the younger, filed his bill in Chancery against Mrs. Bartlett and A. G. Milne, the elder, stating the above, among other matters, and that he sustained great inconvenience and loss in his business in consequence of the inca-

capacity of his said partner to attend to the business, and he prayed that the partnership might be dissolved, and the accounts thereof taken in the usual way up to the time of filing the bill.

Mrs. Bartlett, by her answer, admitted the facts as stated in the bill, and consented to the dissolution of the partnership; but submitted that, under the circumstances, her husband or his estate ought not to be liable to pay any part of the said annuity.

The other defendant also consented to relieve Mr. Bartlett's estate from contributing his proportion of the annuity.

Mr. Goldsmid, for the plaintiff, said the Court's jurisdiction to dissolve the partnership on proof of the insanity of the one partner, was sustained by the case of *Sayer v. Bennett*,<sup>a</sup> the first on the subject; a dictum of Lord Eldon, in *Waters v. Taylor*;<sup>b</sup> *Jones v. Noy*;<sup>c</sup> and *Kirby v. Carr*.<sup>d</sup> In these cases references were directed to inquire whether the parties were lunatic without probability of recovery. That was all that was asked in the present case.

Mr. Reynolds and Mr. Colville, for the two defendants, submitted to such order as the Court should make.

The Vice Chancellor said it did not appear to him that there was any occasion for a preliminary inquiry before the master in this case, as Mr. Bartlett was duly declared a lunatic under a commission,—a fact which was wanting in the cases referred to. There was here the best evidence of the lunacy, and the cases cited clearly supported the jurisdiction to make a decree in the terms prayed by the bill.

*Milne v. Bartlett.*—At Westminster, Easter Term, 1839.

### Queen's Bench.

[Before the Four Judges.]

#### NOTICE OF ACTION.

*Where an act provides that for any thing done under its provisions no action shall be maintained without notice first given; parties who have bona fide intended to proceed under its provisions are entitled to such notice, though they may not be so strictly within the words of the act as to be enabled to render it a complete defence for themselves.*

*The clerk of trustees, appointed under an act, is, for such a purpose, in the same situation as the trustees, and is entitled to notice.*

*A letter demanding the names of persons, and threatening legal proceedings, is not a notice of action. The notice must be distinct and unequivocal, so as to give the party the opportunity of determining whether he will tender amends or defend himself.*

This was an action of libel tried at the last sittings at Westminster, before Lord Denman. The plaintiff had been a resident in the parish of St. Luke. The defendant was clerk to a

<sup>a</sup> 1 Cox, 107.

<sup>b</sup> 2 V. & B. 299; see p. 303.

<sup>c</sup> 2 Myl. & K. 125. <sup>d</sup> 3 Y. & C. 184.

board for paving and lighting that parish. The local act under which the board was constituted gave the trustees of the board a power to remove privies, hogsties, and other nuisances, by giving notice to the parties, &c. The act required that if for anything done under its provisions an action was brought, one month's notice thereof must be given to the parties intended to be made defendants. It appeared that certain persons had made representations to the trustees of the paving board that the house occupied by the plaintiff, was used as a disorderly house. The trustees proceeded to consider the complaint, and resolved that a notice should be served on the plaintiff, requiring him to abate the nuisance or to remove. A notice was accordingly written by the defendant, signed by him and served by the constable on the plaintiff at his house. The plaintiff's attorney was forthwith instructed, and he wrote to the defendant, requesting to know who were the persons that had authorised the slanderous statement, as it was the intention of the plaintiff to bring an action to recover damages for the defamation. The defendant wrote to say that he should be happy to receive process, but he added that he could not give the names of any gentlemen, or render further information on the subject. The present action was then brought. The defendant pleaded the general issue, and marked according to the new rules in the margin of the pleadings that the plea was put in under the statute by which the board was constituted and governed. At the trial it was objected that what the defendant had done, having been done under the local act, he was entitled to one month's notice of action. It was answered that the defendant was not within the act, and that if he was, the letter of the plaintiff's attorney to the defendant was a sufficient notice. The Lord Chief Justice, was of opinion that notice of action was necessary, and that the letter did not amount to notice. A verdict was therefore taken for the defendant.

Mr. Erle now moved for a rule to shew cause why this verdict should be set aside and a new trial granted. In the first place it is clear that the defendant was not proceeding under the provisions of the local act. What was the object of that act? It was to provide for the cleansing, watching, paving and lighting of the parish. The powers to the trustees were powers necessary to effect that object. The act provided for the physical comfort of the parishioners; not for their moral condition. The interference of the trustees in the matter of a supposed brothel was therefore clearly out of the limits of the act, and the persons who thus choose to interfere in the matter, over which they have no lawful jurisdiction, must take the consequences. They cannot protect themselves under the provisions of the act, which they have not strictly observed. If that is so, then there is no necessity for a notice of trial; but if a notice of trial is necessary, then, it is submitted that the letter of the plaintiff's attorney is a sufficient notice. It expressly states the plaintiff's

determination to bring an action, and it is treated by the defendant as a notice of action; for his answer to it is that he is ready to receive process. The defendant himself has therefore answered this objection, and the direction at the trial was wrong, and the verdict must be set aside, and a new trial granted.

Mr. Justice Littledale.—In this case I think that a notice was requisite. I find a case in Holt's Reports,\* where a similar question arose, and Lord Chief Justice Gibbs held that a letter from the plaintiff's attorney, claiming the delivery of some coffee in the possession of the West India Dock Company, of which company the defendant was treasurer, and adding that he was instructed to take legal measures if it was not delivered forthwith, was not a notice within the meaning of the act by which the company was constituted. That exactly resembles what has been done in this case. An intimation of intention of this sort is not of itself sufficient: it ought to be followed up by a distinct notice of action. The letter was only an intimation of an intention, which might or might not be carried into effect. That alone is not sufficient. It is contended here that this is not a thing which falls within the province of the trustees of the paving board, and that as it is not within their province, the defendant is not entitled to a notice. But if they *bona fide* believed, and acted on that belief, that it was a matter within their province, that alone would be sufficient to entitle the trustees to notice before action is brought. The trustees might not be able ultimately to justify themselves under the provisions of their local act; but if they acted in the belief that they were carrying the provisions of the act into effect, they are entitled to notice. The defendant, who is their clerk, and was acting under their direction, must be considered in the same situation with the trustees, and is equally entitled to notice.

Mr. Justice Patteson.—I think there is sufficient to show that the defendant is entitled to notice. It is not pretended that this was a proceeding directly under the statute; but it was enough under the statute to entitle the trustees to notice. Here the action is premature, for no notice was given to satisfy the words of the section. Supposing the letter in the case was intended as a notice, I think it is a bad notice, for it is a conditional notice. The case cited by my brother Littledale shews that it does not state that the action will be brought, but that if something is not done, it is the intention of the plaintiff that an action shall be brought. Now the object of notice of action is to give the party complained of the opportunity of tendering compensation; but nothing of that sort is done here. There is no time mentioned within which the action will be brought, and the defendant therefore has not the opportunity given him of making his election whether he will tender amends or defend an action.

Mr. Justice Williams.—It is a completely different question whether the trustees will bring themselves within the statute, so as to

\* *Lewis v. Smith*, Holt's N. P. Ca. 27.

have a perfect defence, or whether they do enough to entitle themselves to notice of action. To make out the first, it might be a serious question whether a proper investigation by the trustees ought not to be proved. For the latter purpose it is not necessary that they should have a complete defence to the action. There are many cases of that sort. Such, for instance, as that of a constable who has not brought himself completely within the protection of an act under which he appears to have proceeded, and yet he is held entitled to notice of action, as he has the semblance of being justified by the act. There is no distinction here between the trustees and the defendant. If he has acted clearly within the provisions of the statute, he would not need the notice; but in a case where his having done so is doubtful, though he meant to do it, he is entitled to the protection given him by a notice. There is enough here to shew that a notice of action was intended, but that intention was not carried into effect.

Rule refused. *Norris v. Smith*, T. T. 1839. Q. B. F. J.

#### BAIL.—RENDER OF PRINCIPAL.

*The sureties in a bond, given under the provisions of the 1 & 2 Vict. c. 110, are to be treated as bail, and may render their principal, according to the same practice which would have been applicable in the case of bail.*

In this case a rule had been granted early in Easter Term, calling on the plaintiff to shew cause why the defendant should not be at liberty to render himself in discharge of the bond, with sureties into which he had entered, under the 8th sect. of the 1 & 2 Vict. c. 110.\*

Mr. Addison subsequently shewed cause against the rule.—The proposition here is to allow the defendant to render in discharge of his bail between verdict and judgment. Though the verdict was obtained at the last Spring Assizes, no judgment has been entered up, for this rule has operated as a stay of proceedings. The question is, whether the defendant can now render. He cannot; for the alternative in the bond is “to pay such sum as shall be recovered;” or “to render himself to the custody of the jailor, according to the practice of the Court, or within such time and in such manner as the said Court or any Judge thereof shall direct, after judgment shall have been recovered.” The expressions here clearly shew that this bond is not to be treated as a bail-bond, but as a bond of a limited nature, and that if the render takes place, it can only do so after judgment recovered. There has not been any judgment in this case, and the defendant therefore is not in a situation to render himself. The statute *per se* does not enable him to make the render: it directs that he shall do so according to the practice of the Court: it establishes no

new practice in his favour. Even under this act arrests on *measne process* may still be made in certain cases. Defendants could then be bailed in the usual way, and then they might render in discharge of their bail in the usual way. So that if the words in the act respecting the render, “according to the practice of the Court,” are to be taken independently of the recovery of judgment, there is still enough to satisfy them. In *Winstanley v. Gaitkell*,<sup>b</sup> *Glendenning v. Robinson*,<sup>c</sup> and *Maude v. Jewett*,<sup>d</sup> the Court interfered in favour of the bail; but in each case intimated that it was only in favour of bail, and only where the law itself imposed a difficulty on the bail. Here neither of these reasons for interfering exists. The sureties here are not bail. There is a well-known distinction between bail and mainprize. In Bacon’s Abridgement<sup>e</sup> it is said, “Bail and mainprize, words often used in our books as synonymous, agree in this, that they save a man from imprisonment in the common jail;” but it is added “the chief difference is, that a man’s mainperners are barely his sureties, and cannot imprison him themselves to secure his appearance, as his bail may, who are looked upon as his jailor, to whose custody he is committed, and therefore may take him on a Sunday and confine him till the next day, and then render him;” and for this 6 Mod. and Lord Raymond are cited. It is also said “Against him that is mainprized, *de die in diem*, no bill can be filed: otherwise against him that is bailed,” for which 4 Inst. 180, is cited. These authorities shew a clear distinction between bail and mainprize. Suppose this defendant was taken into the custody of the marshal, what authority would the marshal have to keep him? In the case of bail the party is supposed to be in their custody all the time: that is not so in the case of sureties in a bond of this sort. The statute here does not give to the sureties the power of rendering the party as bail may render him. When this case was moved, reference was made to the practice with respect to bonds given under the 6 Geo. 4, c. 16, by members of parliament. The sureties in such bonds are not treated as bail, nor can these sureties be so considered.

Mr. Cresswell in support of the rule.—The authorities cited are not in point. The sureties of a member of parliament under the 6 G. 4, c. 16, may be like mainperners, for they undertake to pay—they have no alternative of paying or rendering. Here that alternative is given—the party may render—he may render according to the practice of the Court. The practice of the Court is in the discretion and under the authority of the Court, and if necessary, the Court may establish the practice in this instance. The Court has only to make an order for the render of the defendant, and the provisions of the statute may then be complied with. [Mr. Justice Patterson.—What

\* See the report of the discussion on the application, *ante*, Vol. 17, p. 491, *nom. Houston v. Coates*.

<sup>b</sup> 16 East, 289. <sup>c</sup> 1 Taunt. 320.

<sup>d</sup> 3 East, 145.

<sup>e</sup> Tit. Bail in Civil Causes, 321.



do you do with the words "after judgment?" That the render shall be according to the practice of the Court after judgment; but if before judgment, according to the order the Court may make for the occasion. The Court has the power to direct in what manner the render shall be made after judgment, but is not obliged to wait for that purpose until after judgment is signed. If the Court may make an order in a particular case, it may make a general rule of practice. [Mr. Justice *Patteson*.—Then you apply the words "after judgment" to the time of the render, and not to the time when the Court is to exercise the power?] That is so. [Mr. Justice *Littleton*.—The number of days for the render may depend on circumstances, so that no general rule can be laid down.] That does not interpose a difficulty in the way of the argument. The Court might, in a particular case, suspend a general rule. As to the authority of the marshal to receive the party, the Court may give him authority; but that question is not necessarily raised now.

*Cur. adv. vult.*

Lord Denman, C. J. having stated the facts of the case, the condition of the bond, and the clause of the act, proceeded thus:—The difficulty we felt was as to what was the practice of the Court in bonds of privileged persons, which are somewhat similar in nature to the present. Now the practice of the Court as to renders applies only to cases where defendants are at liberty upon bail-bonds. The present case is not a render of that sort. The defendant here, under the authority of the 8th section of the act, has given a bond to pay the money or to render according to the practice of the Court; and the question is whether he can be considered with reference to that practice to be in the same situation as if he had been arrested and had put in bail on the arrest. As to the right of the marshal to detain the party, the rule of Court or the order of a Judge for that purpose would be a sufficient authority to the marshal. We have then to consider whether the Court can on the words of the section make the order. Some doubts have been entertained on the words "after judgment." They appear however not to apply to a render "according to the practice of the Court," and do not restrict the application of that phrase now, as, according to the practice of the Court, the bail would have the opportunity of rendering after verdict and before judgment. So we think that the obligor in this bond would be at liberty to do the same. The rule must therefore be absolute.

Rule Absolute.—*Owston. v. Coates*, T. T. 1839. Q. B. F. J.

#### Queen's Bench Practice Court.

SCIRE FACIAS.—QUASHING WRIT.—RULE NISI.  
—COSTS.

*A rule by a plaintiff to quash his own writ of sci. fa., is nisi in the first instance, and not absolute.*

This was an application by *Wordsworth*, at the instance of the plaintiff, for the purpose of

quashing a writ of *sci. fa.* issued by himself, on the ground of certain defects in the writ, on payment of costs. There was no doubt that the plaintiff had a right to succeed in his application, as a matter of course, because the writ was his own: he acknowledged that the proceeding was defective; and he proposed to quash it on payment of costs. The only question was, whether the rule to which the plaintiff had a right was *nisi* or absolute in the first instance. In one case Mr. Justice *Littleton* had decided that the rule ought to be *nisi* in the first instance, but it was difficult to conceive on what ground that decision depended, as the defendant could have no cause to shew against the rule.

*Williams, J.*—The rule must be *nisi* in the first instance.

Rule *nisi* accordingly.—*Linch v. Taylor*, E. T. 1839. Q. B. F. C.

#### Common Pleas.

GUARANTEE.—STATUTE OF FRAUDS.

*Where a debt being due to the plaintiff from one W., and the defendant writes to him in the following terms, "W. being again disappointed, and you expressing yourself as inconvenienced for the money, I enclose you his acceptance, payable at two months. You may put your name to it as drawer, and may safely pay it away." "I never put my name to bills: respectable professional men never should; but I will see it paid for W." Held that a sufficient consideration appeared on the letter to make an action maintainable on its terms.*

This was an action on a guarantee. The declaration alleged that one Major Walsh was indebted to the plaintiffs before the making of the promise by the defendant in the sum of 28*l.* 17*s.* 6*d.*, for the hire of a cabriolet and horse; and that on the 24th March, 1838, the defendant, in consideration of the forbearance of the plaintiffs, undertook to pay the said sum to the plaintiffs. The defendant pleaded, denying that there was any sufficient agreement or undertaking on his part to make him liable to pay the debt of Major Walsh. At the trial of the cause, the evidence relied upon chiefly was a letter from the defendant, who was the attorney of Major Walsh; and it appeared that frequent application having been made by the plaintiffs for the payment of the money due to them, the defendant wrote in the following terms, "Major Walsh having been again disappointed, and you expressing yourself as inconvenienced for the money, I enclose you his acceptance, payable here at two months. You may put your name to it as drawer, and may safely pay it away." The plaintiffs having subsequently requested the defendant to put his indorsement on the bill, he wrote again: "I never put my name to bills,—respectable professional men never should; but I will see it paid for Major Walsh." This was the evidence upon which the plaintiffs sought to recover against the defendant, and the jury returned a verdict for them with damages.

*Andrews*, Serjt., now moved for a rule to shew cause why a nonsuit should not be entered, or a new trial had. He contended that the letters produced did not amount to an agreement, or a memorandum of agreement, that would satisfy the provisions of the statute of frauds. The principle, it was submitted, was that there must be on the face of the undertaking set up all the essentials of an agreement which would bind both parties. Here, however, there was no consideration.

*Tindal*, C. J.—I see no reason at all for granting a new trial in this action. The situation of the parties was this : Major Walsh owed the plaintiffs 23l. 17s. 6d.; and there had been various applications for the payment of that sum, and by the defendant's letter it appears that the plaintiffs said how much inconvenience they were put to by its non payment. Major Walsh, then being about to quit England, the defendant draws up the body of a bill in his own handwriting, and sending the acceptance of Major Walsh to the plaintiffs, he tells them they may safely become the drawers of the bill. There is no additional security given beyond the signature of Major Walsh; and then we find that in the letter which the defendant sends after he has sent the bill, he says in fact, "I never put my name to bills, because it is not proper that it should be seen attached to floating securities;" but then he says, "I will see the bill paid." I think therefore there is no reason to disturb this verdict.

*Boasquet*, J.—This is a clear case of consideration between the parties. The debt is due from Walsh; then the defendant draws the bill, and it is accepted by Walsh, payable at a certain day. The defendant then sends it to the plaintiffs, asking them to accept it, and saying that if they will do so, he will see it paid. The plaintiffs receive the bill, and then it is clear that when it was accepted by them, the debt was suspended. It was then in consideration of that suspension that the defendant promised to see the bill paid.

*Coltman*, J., and *Erskine*, J., concurred.  
Rule refused.—*Emmet and another v. Kearns*, T. T. 1839. C. P.

WRIT OF ERROR.—STRIKING OUT ISSUE.

*When issues in fact are joined upon a record upon which there has been judgment given on a demurrer, upon which the defendant desires to bring a writ of error, the Court will only allow those issues to be struck out, with liberty to restore them, where both parties consent.*

*R. V. Richards* moved for a rule calling on the plaintiff in this action to shew cause why the issues in fact joined in the action should not be struck off the record, with liberty to restore them, until judgment in error should have been obtained upon a demurrer, upon which this Court had decided, but upon which the defendants were desirous of bringing a writ of error. The record could not be taken up to the Court of Error, until judgment had been given upon all the issues; but the is-

ssues in fact might be unnecessary to be tried upon the judgment of the Court above being given. He referred to *Beckham v. Knight*, 17 L. O. 492.

The Court granted a rule *nisi*, intimating that this step could only be taken when both parties consented.

*Wilde*, Serjeant, and *W. H. Watson*, on a subsequent day shewed cause. There was a considerable difference between the present case and that of *Beckham v. Knight*, because there the application was on behalf of the plaintiff in his own delay, and the decision of the Court of Error would be final. Here it was the defendant who applied, and the issues were distinct traverses of the particular statements in the declaration; and if the judgment of the Court below were affirmed, the parties must go down to trial.

*Tindal*, C. J.—All that I can do is to endeavour to negotiate this matter between you. What are the issues?

*Wilde*, Serjeant.—That the plaintiff did not bestow the work and labour, as alleged in the declaration; that he bestowed them voluntarily, and without any agreement or contract with the defendants: that he had not delivered any account of his demand; and finally payment of his claim. The case could only go to the Court of Error on an assessment of damages; but there was no such thing here. [*Tindal*, C. J.—You take up nothing certainly, but that upon which, upon the face of the record, there appears to be final judgment. You may however consent to the course proposed.]

*R. V. Richards*, *contra*, said that the question was only whether the matter could be so arranged as that the defendant's object would be accomplished. They would accept any terms that might be imposed.

*Tindal*, C. J.—It can only be done by mutual arrangement and consent, and we certainly have no power to compel the parties to take the course suggested.

Rule discharged.—*Garden v. General Cemetery Company*, E. T. 1839. C. P.

SETTING ASIDE AWARD.—IMPROPER RECEPTION OF EVIDENCE.—WAIVER.

*The defendant sought to set aside an award on the ground of the improper reception of evidence at a meeting not duly convened. It being sworn by the arbitrators that at a meeting subsequently properly held they agreed to strike out the evidence, because they found that they had not given the notice required by the order of reference, and that they did not take it into consideration in making their award; and it appearing that the defendant attended before the arbitrators to support his case at subsequent meetings, the Court refused to set aside the award.*

*Wilde*, Serjt., and *Chandless*, shewed cause against a rule obtained by *Erle*, for setting aside the award of the arbitrators in this cause, on four grounds:—First, that of the improper conduct of the arbitrators in holding a meet-

ing without due notice to the parties; secondly, of refusing to hear part of the evidence tendered by the defendant, the award being made in favour of the plaintiff; thirdly, of closing the award without notice to the defendant; and fourthly, of improperly receiving evidence to extend the conveyance made by the defendant to the plaintiff. It was an action of trespass, for breaking and entering a close, called Pennerton Close, part of the estate of Great Ash, in Devonshire; and the question for decision in the cause was, whether that close passed under the conveyance which had been made. The plaintiff having taken possession of the close, the defendant and his servant had entered it, and for this alleged trespass the action was brought. The second and third objections to the award were admitted by the defendant to be answered by the affidavits now produced, and the first and fourth therefore only remained to be considered. As to the first point, it was admitted that the meeting which had been held by the arbitrators had been irregularly convened; but the arbitrators swore that they were not at all aware of the extent of the notice (six days) which was required, the order of reference having been sealed up by the parties. As to the improper reception of evidence, the particular evidence objected to was not pointed out by the affidavits, and the Court therefore could not listen to this objection.

*Erle.*—The evidence was that of Houlditch, a former occupier of the same premises.

*Bosanquet, J.*—Should it not be shewn that the evidence was objected to at the time?

*Erle.*—The defendant did object to it, by refusing to attend the meeting which had been held, at which the witness was examined.

*Wilde, Serjt.*—The explanation given upon this subject was that information being conveyed to the arbitrators that the evidence of Houlditch would be material, on Sunday, the 2d April 1838, they sent for him to attend before them on the following day, as he was immediately about to proceed to America, and gave notice on the same afternoon to the plaintiff and defendant to attend the meeting. Neither of them, however, appeared; but the arbitrators in their absence took the examination of the witness. The length of the notice required was subsequently communicated to the arbitrators, and then another meeting was held, at which the prior inquiry became the subject of conversation, and it was agreed that Houlditch's evidence should be struck out; and the arbitrators now swore that they did not take that evidence at all into consideration in making their award. Both objections now made were, however, waived by the defendant; because he and his attorney had repeatedly appeared before the arbitrators after this meeting, and had called and cross-examined witnesses before them.

*Tindal, C. J.*—The facts sworn to are quite enough to shew a waiver, unless they are contradicted.

*Erle, contra,* stood upon the improper reception of the evidence at a meeting not duly held.

*Tindal, C. J.*—It is very true, that if evidence is improperly heard at a trial, it is a good ground of application for a new trial; but then it is usual to bring before the Court what the evidence is to which objection is made. Here, however, the parties are entirely silent, and the objection made is merely on the point that there was an improper examination of a witness in the absence of the party who was interested; and the question is, whether that objection has not been waived? Notice was given to the party, after the evidence had been taken, of its reception, and upon objection being made, it was agreed that it should be struck out, and the arbitrators swear that it made no impression upon them. The parties then go on calling witnesses, and cross-examining others, and make no further objection at all until they find that the award is against them, and then only do they come forward. I think therefore that this rule must be discharged.

*Bosanquet, J.*—The objection is on the irregularity of the meeting, at which Houlditch was examined without the knowledge of the defendant. The parties were afterwards apprised of the fact of the reception of the evidence of that witness, and it appears that they were told that the evidence would be struck out, and then the arbitrators swear that they afterwards paid no attention to it; and the defendants go on with the cause. The rule therefore, I think, cannot be made absolute.

*Coltman, J., and Erskine, J., concurred.*

*Kingwell v. Elliott and another, E. T. 1839. C. P.*

### Queen's Bench.

#### ORDER OF BUSINESS.

Saturday, June 1, *Crown Paper*; and the whole of the next week the *New Trial Paper*.

### NUMBER OF ARTICLES OF CLERKSHIP ENROLLED.

#### QUEEN'S BENCH.

It will appear from the following statement that the number of persons articled since the New Rules, compared with the five years antecedently, has not much diminished:—

In 1831 . . . . .	461
1832 . . . . .	538
1833 . . . . .	601
1834 . . . . .	581
1835 . . . . .	523

The following are since the Examination Rules:—

In 1836 . . . . .	541
1837 . . . . .	459
1838 . . . . .	511

## ATTORNEYS TO BE ADMITTED

*In Michaelmas Term, 1839.*

## QUEEN'S BENCH.

[The Notices of these Applications were served after the former List was printed.]

<i>Clerk's Name and Residence.</i>	<i>To whom articulated, assigned, &amp;c.</i>
Ashford, Robert, 3, Buckingham St., Pimlico ; and 3, Lyon's Inn.	Henry Scarth, Lyon's Inn.
Bird, William Williams, Hereford.	Thomas Bird, Hereford.
Bentall, Francis, Totnes ; and Craven Street.	John Coles, Throgmorton Street.
Blake, Charles, 29, Clifton Street, North-Buildings ; and London Wall.	Charles Budger, Winchester.
Carslake, John Hawkey Bingham, 27, Charlotte Street, Bloomsbury ; and Exeter.	John Smale, Exeter.
Gwynne, William Horatio, Great Yarmouth.	Isaac Preston, Yarmouth.
Harris, Thomas, the younger, 4, Queen's Row, Camberwell, Warwick Court ; and Kingsbridge.	Thomas Harris, the elder, Kingsbridge.
Mudd, John Youngman, Rotherfield Street, Islington ; and Hadleigh.	Henry Offord, Hadleigh.
Robinson, Joseph, 24, Rockingham Row, New Kent Road, Hereford ; and Tooting.	James Jay, Hereford.
Roberts, Rathbone Bartlett, 42, Spencer St., Northampton Square ; and Newport Pagnell.	Henry Lucas, Newport Pagnell.
Rowland, Jno. Leche, 12, Cecil Street, Strand.	William Cooper, Shrewsbury.
Surrage, John, 19, Surrey Street ; and Sandwich.	Thomas Lyddon Surrage, Sandwich.
Theobald, John Peter, 8, Camden Cottages, Kentish Town.	John Theobald, Staple Inn.
Teulon, Peter Ross, 22, Queen Street, Golden Square.	Joseph Pope Hammett, Southampton Buildings.
Vincent, Charles, Clement's Inn.	George Vincent, Temple ; assigned to Richard James Hitchcock, Davies Street.
Williams, Edward, Hereford.	Peter Warburton, Hereford.
Wright, Newenham Charles, 11, Queen's Sq., Bloomsbury.	Alexander Milburn, Millman Street ; James Boger, Lothbury.

*Ordered by the Hon. Mr. Justice Coleridge to be added to the List.*

Taunton, Wm. Doidge, Jun., 13, New North Street ; and Totnes.	William Doidge Taunton, Totnes.
Cock, Peter, 15, Everett, Street, Russell Sq. ; and Truro.	George Simmons, the younger, Truro.

## APPLICATIONS FOR RE-ADMISSION

*On the Last Day of Trinity Term, 1839.*

Hill, Francis, 56, Great James's Street ; 9, Bridport Place ; and Nicholas Street, Hoxton.	Robinson, George, Wakefield.
Monckton, Wm. Charles, 33, Norfolk Street.	Short, Charles Samuel, 15, Great Randolph Street, Camden Town.
Orchard, James, 9, Portman Place, Edgeware Road.	Vickers, Thomas Thwaites, Kingston-upon-Hull ; and Edmund's Place, Aldersgate St.

*Affidavits filed at the Master's Office on the 22d May.*

Brooks, William, Great Grimsby.	Veevers, Thomas, 10, Angel Terrace, Islington ; and Stoke-upon-Trent.*
Evans, William Martin, Gloucester.	
Heywood, William Henry, Poulton, Wilts.	

\* The affidavit in support of this application has been ordered to be received *nunc pro tunc*.

## LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

### House of Lords.

- To improve the Practice and Proceedings in the Court of Pleas of Durham. [Passed.]  
 For the better protection of Purchasers against Judgments, Crown Debts, and Fiats in Bankruptcy. [Passed.]  
 To amend the 39 G. 3, c. 79, for suppressing Seditious Societies. [Passed.]  
 To enable Justices of Assize on their Circuits to take inquisition of all Pleas in the Court of Exchequer of Pleas, without Special Commission. [For 2d reading.]  
 Belper Small Debts Court Bill.

### House of Commons.

#### ADMINISTRATION OF JUSTICE.

- To improve County Courts. [For 2d reading.] Lord John Russell.  
 For holding District Sessions of the Peace. [For 2d reading.] Lord John Russell.  
 For keeping and authenticating non-parochial Registers of Births, Deaths, and Marriages. [In Committee.] Lord John Russell  
 For regulating the Police Courts in the Metropolis. [For 2d reading.]  
 For the better ordering of Prisons. [In Committee.] Lord John Russell.  
 To regulate and enlarge the Summary Jurisdiction of Justices. Lord John Russell.  
 [For 2d reading.]  
 For further improving the Police in and near the Metropolis. Mr. F. Maule.  
 [For 2d reading.]  
 Small Debts Court Bills for the following places:—  

Aberford,	Newark.
Bury, (Lancashire)	Newton Abbot,
Chesterfield,	Nottingham,
Eckington,	and
Glossop,	Mansfield,
Grantham,	Oldham,
Halifax, Hudders-	Pontefract,
field, & Bradford	Rochdale,
Hatfield,	Rotherham,
Kingsbridge and	Tavistock,
Dodbrooke,	Warrington,
Leeds,	West Ham,
Liskeard,	Worksworth,
Liverpool,	Yorkshire.

- To enable the Justices at Quarter Sessions to appoint a Clerk of the Peace in certain Cases. [In Committee.] Mr. Pakington.  
 To abolish Grand Juries. Mr. Pryme.  
 For regulating the mode of establishing Rules of Proceedings in the Borough Courts of England and Wales. [In Committee.]  
 To amend the Law relating to double and treble Costs, to pleading the General Issue, and as to Notice and Limitation of Actions. [In Committee.] Sir F. Pollock.

- To amend the Law relating to the Custody of Infants. [In Committee.] Mr. Serjt. Talfourd.  
 To amend the Imprisonment for Debt Act, as to Advertisements. [In Committee.] The Attorney General.

#### LAWS OF PROPERTY.

- To amend the Law of Copyright. [In Committee.] Mr. Serjt. Talfourd.  
 For the Enfranchisement of Lands of Copyhold and Customary Tenure. [In Committee.] Mr. James Stewart.  
 For securing the Benefit of Inventions in Arts and Manufactures. Mr. Mackinnon.  
 To render the Owners of Small Tenements liable to the payment of Rates assessed thereon. Mr. Robert Gordon.  
 [In Committee.]

#### LAW OF ELECTIONS.

- For the registration of Parliamentary Electors. [In Committee.] Mr. Attorney General.  
 Controverted Elections. Lord Mahon.  
 [For 2d reading.]  
 To amend the jurisdiction for the Trial of Election Petitions. Sir R. Peel.  
 [For 2d reading.]  
 For assimilating the qualification of Electors as Voters for Coroners to that of the constituency of members of Parliament, and taking the Poll at Election for Coroners in one day. Sir H. Fleetwood.  
 For extending the qualification of Voters for members in Parliament representing Counties, to the occupiers of houses of the clear annual value of 10*l.* as in Boroughs. Sir H. Fleetwood.

#### SHERIFFS—HIGHWAYS AND SEWERS.

- To amend the Laws relating to Highways. [In Committee.] Mr. Barneby.  
 To alter and amend the Laws relating to Sewers. [In Committee.] Mr. Christopher.  
 To regulate the expences to be incurred by persons serving the office of High Sheriff in England and Wales. [In Committee.]

## THE EDITOR'S LETTER BOX.

A correspondent asks whether a youth of seventeen is a fit and capable person to administer an oath in a public office? We presume the practice is legal, but we doubt its propriety.

The question as to stealing title-deeds might have been differently worded, but the meaning is obvious. See 7 & 8 G. 4, c. 29.

We understand that the number to be examined on Wednesday next is 112. The others who gave notice have not, it appears, left their testimonials.

*Errata*, p. 77: for "Munns" read "Nunns;" and for "Weyman" read "Wayman." The Official List of the first name agrees with ours.

# The Legal Observer.

SATURDAY, JUNE 8, 1839.

— " Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## THE PROGRESS OF LAW REFORM.

THE session begins to wear apace, and we think it may be well to give some account of the various measures now before parliament. It, as usual, commenced with very considerable bustle and show of business; but here we are, in the month of June, certainly with less done than usual. Still a silent progress has been made. There is no way of so effectually exciting the public attention to a matter, as bringing it before parliament by a bill or otherwise. Seeds are thus sown that gradually ripen. A proposition, apparently of much difficulty, although not immediately acted on, nay, although absolutely discarded, makes way at the very time it appears to be losing it; and at some future period will not only excite no opposition, but will be received as a boon. Although, therefore, we do not think much will be perfected in the present session, yet we anticipate a much more effective one in the next.

The only bills that have passed are Sir Edward Sugden's for the Protection of Purchasers (noticed 17 L. O. 498, and *ante*, p. 4), and the act to amend the act for Suppressing Seditious Societies. The bills for improving the Police of the Metropolis were read a second time on Monday last. We have already given a very full account of these bills (17 L. O. 353—358). They have since received considerable alteration, (the jurisdiction of the city police having been reserved, and made the subject of a separate bill); and we conceive that they will be subjected even to greater change ere they become the law of the land. They will be fought inch by inch in committee, and we doubt very much whether they will pass this session. The County Courts Bill

has been referred to a select committee with the view of examining its details; and it is understood that it will not be proceeded with until next session. We presume, therefore, we shall have a swarm of local small debts bills passed. The only important bills which stand a fair chance of passing in the present session, appear to us to be Sir Robert Peel's Bill for amending the Jurisdiction for the Trial of Election Petitions, Mr. Serjeant Talfourd's Copyright Bill, although this is stoutly opposed, and Mr. Stewart's Bill for the Enfranchisement of Copyholds, all of which, we believe, will be proceeded with.

We are glad to find that a penny postage is to be established. The advantages to the legal profession will be incalculable. The great facilities it will afford to the communications of agents with their principals, and of clients with their attorneys, are obvious. The increase of correspondence will be very great indeed. A daily account of all that is going on when it may be at all useful or interesting will be a mere trifle. We are also glad on personal considerations. We trust that this work may be included in a single cover, and may thus be sent all over the country at a very slight increase of expense. This will be a much more convenient course than stamping the work, which the Post Office obliged us to abandon. We shall thus pay *our* mite into the Treasury, and we trust our country readers will rejoice accordingly. Indeed, what with railroads and the penny postage, we are in a thriving way.

We are glad also to see that reform in Chancery gains ground; and we do not doubt that some amelioration of the present system will be forced on the government. We shall advert to Lord Lyndhurst's motion on this subject in our next number.

### THE COPYHOLD ENFRANCHISEMENT BILL.

THE Copyhold Enfranchisement Bill was discussed on Wednesday, and was well and stoutly supported to its full extent by the Attorney General; and indeed, with the exception of Sir George Strickland, it was not opposed, as a whole, by any one. Sir Robert Inglis, Mr. Estcourt, and Lord Granville Somerset, objected to the compulsory clauses, but thought there was much good in the other parts of the bill; and Sir Edward Sugden, who led the opposition to the bill, admitted that a compulsory measure should be adopted, as far as heriots were concerned. These were the only members who opposed the bill at all; while it was supported, not only by the Attorney General and Mr. Stewart, but by the Solicitor General, the Chancellor of the Exchequer, Mr. Aglionby, and Mr. Freshfield (by the two last most ably), to all of whom the cause of enfranchisement is greatly indebted. The result of the debate was, that Mr. Stewart agreed to abandon the compulsory clauses; and, considering the late period of the session, and the heavy government business which still presses for consideration, we think he did wisely. We must say, however, that a very unfair advantage was attempted to be taken of his concession. It was contended by some, although we can hardly suppose that this will be countenanced by any number of members in the House, that he had not only conceded the compulsory clauses (being clauses 38 to 46 in the bill,) but that he had conceded all those clauses by which the lord of the manor and two-thirds of the tenants may bind the remaining third; or in other words, that out of 82 clauses in the bill, no less than 72 should be struck out. Now, we think it will be obvious that in agreeing to strike out the compulsory clauses, it could never have been intended to strike out all that is contended for. The bill, as every one knows who has attended to it, is framed in analogy to the Tithe Commutation Act. Now what is understood by the voluntary part and the compulsory part of this act? The voluntary part commences at section 17, and under it parochial meetings may be called, at which the owners of two-thirds in value may agree on the sum to be paid to the tithe owners, *which agreement shall be binding on all persons interested in the tithes of the parish*. Now this may in one sense be considered compulsory, but still in contradistinction to the remaining portions of the act,

which authorize the Commissioners to interfere summarily after the 1st of October 1838, it has always been treated as voluntary. This will be seen in any of the proceedings of the Tithe Commissioners, which are distinctly called "voluntary," down to the 1st of October 1838. But what makes this stronger is, that Mr. George Hope, the member for Weymouth, gave notice of his intention in Committee "to strike out the compulsory clauses" in the Copyhold Enfranchisement Bill; and what were these clauses, as defined by him? Why, clauses 38 to 46. When, therefore, a proposition was made to strike out the compulsory clauses, what could the supporters of the bill understand, but that these clauses so indicated were intended. We cannot conceive, therefore, that the attempted construction of "compulsory clauses" will be persisted in. We think, indeed, if it is, it will do injury to those who oppose this bill, as shewing that their opposition is conducted unfairly, and that while they are unable to give any reasonable objection to the measure, they are seeking to defeat it in an under-hand manner, by a side-wind.

### ON THE RETURN OF APPRENTICESHIP MONEY.

By the stat. 5 Eliz. c. 4, s. 35, if any master shall misuse his apprentice, or the apprentice do not his duty to his master, a justice of the peace may make such order as the equity of the case shall require; and if he cannot compound the matter, then such justice shall take bond of the master to appear at the next sessions, and the justices may in writing declare that they have discharged the apprentice. Under this statute it has been held that the justices might order a restitution of the apprenticeship premium within the equity of the statute. *Dillan's case*, 1 Salk, 67; and in the case of *Rex v. Johnson*, Id. 68, the same rule was laid down. However, in a subsequent case which was fully considered, the court came to a different conclusion. In that case the justices had ordered that the master should refund 3*l*. of the premium he had received with the apprentice, but the court, although reluctantly, held that, the statute being silent the order must be quashed, *Rex v. Vandaleer*, 1 Str. 69. The point came before the court subsequently in the case of *Rex v. Amies*, 2 Barnard. 244; 1 Bott.

P. L. 682, in which *Probyn, J.*, said that the justices might order restitution, but the case of *Res v. Vandaleer* was not cited; and in Bacon's Abridgment, Master and Servant C., it is laid down that "the doctrine of refunding seems to be now established as founded on great reason, though not expressly mentioned in the act; for the justices being authorized to discharge according to their discretion, when the end of the apprenticeship cannot be attained by one person, it is but justice the master should return part of the money he has received with his apprentice, to place him out with a new master." The law as to this matter stood in this conflicting and unsettled state, when the point recently came before the Court of Exchequer, and it will be seen that the whole of the Judges of that Court held that the rule laid down in the case of *Res v. Vandaleer* was the correct one.

Lord Abinger, C. B., said—"If the authorities on this subject had been consistent, I should have been much disposed to think that we ought to be bound by them; but they appear to have been conflicting, and the construction put upon the statute has varied in the different cases. That of *Res v. Vandaleer*, 1 Str. 69, however, in which the point seems to have been more fully considered than in other cases, appears to us to be the most satisfactory. The question was then brought under the notice of the full court, and all the Judges seem to have thought that the order for refunding the premium was not warranted by the statute. That case does not appear to have been cited in the subsequent one of *Res v. Amies*, 2 Barnard. 244; 1 Bott. P. L. 682. This view of the subject is confirmed by the argument derived from the statute of the 4 G. 4, that if the justices had already this power, it would have been unnecessary to give it them by express words. Upon the true construction of the statute of Elizabeth, I am of opinion that the justices have no power to order any restitution of the premium, where it has been paid, or, as in this case, to order that it shall not be paid; I think, therefore, that the plea cannot be supported, and that the plaintiff is entitled to judgment. *Parke, B.*—I concur in the opinion that has been given by my lord. If this were *res integra*, and no decisions had taken place upon the statute, no doubt could be entertained on the subject, looking at the words that are used in this section of the statute. The justices have power to pronounce and declare that they have discharged the apprentice of his apprenticeship, and the cause

thereof. No inference arises from that that they can also take from the master a premium he has received, or withhold from him any part of one that may be due; that is extending the statute very much, and enabling the justices to exercise a much larger power than that of merely dissolving the indentures; namely, the depriving the master of what might be due to him for teaching the apprentice his trade for a large portion of the time. That would be my opinion if there were no decisions on the subject: if however the course of decisions had been uniform in giving the justices this power, those decisions would have been binding upon us; but the authorities on the subject are conflicting. In the first cases of *Res v. Johnson*, 1 Salk. 68, and *Dillon's case*, 1 Salk. 67, the opinion of the court is very shortly delivered, to the effect that the one power is incidental to the other. In *Res v. Vandaleer*, the point was more fully considered, and that decision does not appear to have been mentioned in the subsequent case of *Res v. Amies*. I think, therefore, that there is not any such uniform course of decisions as to be binding upon us, but that we may exercise our own judgment in the matter. If then, we may construe this as a modern statute, it appears to me that no power is given beyond that of discharging the apprenticeship. I do not lay much stress upon the opinion of the legislature, as supposed to be shewn in the statute of 4 Geo. 4, c. 29. Besides, the power is thereby given to two justices, whereas before it was exercised by the four? But I rest my opinion principally upon the ground that there is no current of authorities obliging us to put a different sense upon the words of the statute than that which in ordinary construction they would bear. *Alderson B.*, concurred.—*East v. Pell*, 4 Mee. & Wels. 665.

## NEW BILLS IN PARLIAMENT.

### ELECTORS REMOVAL.

This is a bill to prevent persons in England and Wales from losing their votes at an election by removal after the preceding registration.

It recites that by the 2 & 3 W. 4, intituled, "An Act to amend the representation of the people in England and Wales," it is amongst other things enacted, that in every city or borough which shall return a member or members to serve in parliament, every male person of full age, and not subject to any legal incapacity, who shall occupy within such city or borough, or within any place sharing in the election for such city or borough, as owner or



tenant, any house, warehouse, counting-house, shop or other building, being either separately or jointly with any land within such city, borough or place occupied therewith by him as owner, or as tenant under the same landlord, of the clear yearly value of not less than ten pounds, shall, if duly registered according to the provisions thereafter contained, be entitled to vote in the election of a member or members to serve in parliament for such city or borough; and in the said act are contained various provisions for annually making a register of the names of the persons entitled to vote as such occupiers as aforesaid, in the election of a member or members to serve in parliament for every city and borough in England and Wales:

And that questions often arise as to the right of voting of persons whose names have been duly placed on the register of voters as such occupiers as aforesaid, by reason of their not continuing to have at the time of tendering their votes at any election, the same qualifications in respect of which their names were respectively placed on the said register; and such questions often give rise to great and vexatious expense;

It is therefore proposed to be enacted, that every person whose name shall hereafter be duly placed on any register of voters for any city or borough in England and Wales, as the occupier of any such house, warehouse, counting-house, shop or other building as aforesaid, being either separately or jointly with such land as aforesaid of the clear yearly value of ten pounds, shall at all times after the making of such register, and so long as the same register shall be in force as the register of voters for such city, borough or place, be entitled to vote in the election of a member or members to serve in parliament for such city or borough, although such person may subsequently to the formation of such register, and previously to tendering his vote, have ceased to occupy the whole or any part of the premises in respect of which his name shall have been placed on such register.

That no returning officer, or his deputy, shall at the time of the polling at any election for any city or borough be entitled to put to any person registered and tendering his vote as such occupier as aforesaid, and no such person voting or tendering his vote shall be bound to answer the third question by the said act authorised to be put at the time of polling.

## NEW ORDERS IN CHANCERY.

[Concluded from page 88.]

### FORMS OF WRITS.

No. 9. *Writ of Elegit on a Decree or Order of the Court of Chancery, for payment of Money, Interest, and Costs.*

VICTORIA, by the grace of God of the united Kingdom of great Britain and Ireland, Queen, defender of the faith.

To the Sheriff of

greeting:

Whereas, lately in our High Court of Chancery, in a certain cause or certain causes (*as the case may be*) there depending, wherein *A. B.* and others are plaintiffs, and *C. D.* and others are defendants, or in a certain matter there depending, intituled, "*In the matter of E. F.*" (*as the case may be*) by a decree or order (*as the case may be*) of our said Court, made in the said cause or matter (*as the case may be*) and bearing date the      day of      , it was ordered and decreed, or ordered (*as the case may be*) that *C. D.* should pay unto *A. B.* the sum of £      , together with interest thereon, after the rate of 4l. per centum per annum, from the      day of      , together also with certain costs, as in the said decree or order (*as the case may be*) mentioned, and which costs have been taxed and allowed by *G. H.* esquire, one of the Masters of our said Court, at the sum of £      , as appears by the certificate of the said Master, dated the      day of      : And afterwards the said *A. B.* came into our said Court of Chancery, and according to the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of copyhold or customary tenure in your bailiwick as the said *C. D.* or any one in trust for him was seised or possessed of on the      day of      , in the year of our Lord      ,<sup>a</sup> or at any time afterwards, or over which the said *C. D.* on the said      day of      ,<sup>a</sup> or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit. To hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigne, until the said two several sums of £      , and £      , together with interest, upon the said sum of £      , at the rate of 4l. per centum per annum, from the said      day of      ,<sup>b</sup> and on the said sum of £      , at the rate aforesaid from the      day of      ,<sup>c</sup> shall have been levied. Therefore we command you, that without delay you cause to be delivered to the said *A. B.*, by a reasonable price and extent, all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands and tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of copyhold or customary

<sup>a</sup> The day on which the decree or order was made.

<sup>b</sup> The day mentioned in the decree or order.

<sup>c</sup> The date of the Master's certificate of taxation, or if that were prior to the 1st of October, 1838, say "from the 1st day of October, 1838."

tenure in your bailiwick, as the said *C. D.* or any person or persons in trust for him, was or were seised or possessed of on the said day of ,<sup>a</sup> or at any time afterwards, or over which the said *C. D.* on the said day of or at any time afterwards had any disposing power, which he might, without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said *A. B.* as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents and hereditaments, respectively according to the nature and tenure thereof to him and to his assigns, until the said two several sums of £ , and £ , together with interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ, make appear to us in our Court of Chancery aforesaid, immediately after the execution thereof, under your seal and the seals of those by whose oath you shall make the said extent and appraisement. And have there then this writ.

Witness ourself at Westminster, &c.

No. 10. *Writ of Venditioni Exponas.*

VICTORIA, by the grace of God of the United Kingdom of great Britain and Ireland, Queen, defender of the faith.

To the Sheriff of greeting.

Whereas by our writ we lately commanded you that of the goods and chattels of *C. D.* (*here recite the Fieri Facias to the end*) and on the day of , you returned to us in our Court of Chancery aforesaid that by virtue of the said writ to you directed, you had taken goods and chattels of the said *C. D.* to the value of the money and interest aforesaid, which said goods and chattels remained in your hands unsold for want of buyers. Therefore we being desirous that the said *A. B.* should be satisfied his money and interest aforesaid, command you, that you expose to sale and sell or cause to be sold the goods and chattels of the said *C. D.* by you in form aforesaid taken, and every part thereof, for the best price that can be gotten for the same, and have the money arising from such sale before us in our said Court of Chancery aforesaid, immediately after the execution hereof to be paid to the said *A. B.* And have there then this writ.

Witness ourself at Westminster, the day of , in the year of our reign.

COTTENHAM, C.

LANGDALE, M. R.

LANCELOT SHADWELL, V. C

<sup>a</sup> The day on which the decree or order was made.

THE STUDENT'S CORNER.

MERGER OF ESTATE TAIL.

Mr. Editor,

At the last meeting of a debating club, of which I am a member, the point for discussion was, "whether an estate tail, after possibility of issue extinct, would merge in an estate for life." I argued in favour of the affirmative, and I must say that I was rather surprised to find myself in the minority, though no despicable one; for the negative of the proposition was carried only by the majority of one. It is perfectly clear to me, that an estate tail after possibility, &c. will merge in an estate for life; whether it will merge in all kinds of estates for life is a different point; but that a merger will take place under the following circumstances I must submit to be law:— "*A. B.*, tenant in tail, after possibility, &c. with immediate remainder to *C. D.* for his own life. *A. B.* conveys or surrenders to *C. D.*, the estate of *A. B.* is merged." If such is the case the affirmative of the question is law; for, as I have before said, the question was not in what estates for life an estate tail, after possibility, &c. will merge, but whether it will merge in any estate for life.

Preston says in his Treatise on Merger, p. 223. "For all the purposes of merger, an estate tail after possibility, &c. is classed among estates for life, and is susceptible of merger as such!" One of the chief arguments against merger taking place, was on account of the privileges annexed to the estate tail after possibility, &c.; but it is clear from *Windsmere* and *Hulbard's case*, Godb. 65, that such privileges do not prevent a merger; and, besides, immediately as the tenant in tail, &c. assigns over, the privileges are gone, and the assignee becomes tenant *pur autre vie*. See 1 Inst. 28 a; 1 Cruise, p. 144, and Watkins by Morley, Coote and Coventry, p. 100. And it is clear, therefore, that an estate *pur autre vie* will merge in an estate for one's own life. See 2 Roll. Ab. 498, (h) pl. 2; Preston, 255, &c. If any of your numerous readers will throw a light on the subject, they will oblige

PERSIUS.

QUESTIONS  
AT THE EXAMINATION.

Trinity Term, 1839.

I. PRELIMINARY.

1. Where did you serve your Clerkship?
2. State the particular branch or branches of the Law to which you have principally applied yourself during your clerkship?
3. Mention some of the principal law books you have read and studied?

### II. COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

4. Describe the commencement of an action at Common Law?
5. How long does a writ of summons remain in force, and how may it be continued,—and on what days, and at what hours, can it be served?
6. From what time is a declaration deemed to be filed?
7. Within what time must application be made to a court or judge to set aside any proceedings for irregularity?
8. What are the most common grounds for setting aside a declaration for irregularity?
9. When a defendant is under the usual terms of "*pleading issuably, rejoining gratis, and taking short notice of trial*," what is understood by those terms respectively? And what distance from London makes a country cause; and how does the notice of trial differ in a town and country cause?
10. When it is sought to arrest or detain a defendant under the provisions of the act for the abolition of arrest on mesne process, what is necessary to be stated in the affidavit?
11. What, in such case, is the first process to be taken out?
12. Must the affidavit to hold to bail, since the passing of that act, be entitled in the cause or not?
13. Can any thing besides goods be levied or charged in execution under that act? and if so, state what and in whose hands, and by what form of proceeding.
14. Can an infant execute a cognovit?
15. What are the cases in which the courts grant a rule of interpleader at the instance of the Sheriff?
16. What is the meaning of "*withdrawing a juror*?" and what effect has it?
17. Within what time must a motion for a new trial be made?
18. State some of the cases in which the courts will grant a new trial; and in actions for the recovery of debts what is the amount recovered under which a motion for a new trial is prohibited, and what is the rule on writs of trial before the sheriff?

### III. CONVEYANCING.

19. What is an estate in joint tenancy, and what is a tenancy in common?
20. What is meant by absolute covenants for title?
21. In what respects do freeholds and copyholds principally differ in regard to alienation?
22. Is the assignee of a lease to any, and what extent, liable to the lessor under the covenants of the lessee?
23. Is a sub-lessee to any, and what extent, liable to the original lessor under the covenants of the lessee in the original lease?

24. State the principal points in which the law relating to wills was altered by a late statute.
25. Is a rent-charge payable to the rector or vicar under the Tithe Commutation Act fixed, or does it vary? and, if it varies, how is the amount to be ascertained?
26. What is Simony?
27. In what cases, and in favour of what persons, are bonds or covenants to resign a living legal?
28. In what cases is enrolment essential to the validity of a grant of annuity, and in what cases not?
29. State the advantages of some of the principal clauses in the late enactment with respect to judgments.
30. How do indentures of lease and release operate to pass the legal fee?
31. What are contingent remainders? and in what cases may they be defeated? and in what not?
32. Does the word "grant" in a conveyance imply in all, or in any and what cases, a warranty of title?
33. By what assurance, if any, can a married woman effectually dispose of her interest in real or personal estate?

### IV. EQUITY AND PRACTICE OF THE COURTS.

34. Within what time is a plaintiff, who has delivered exceptions to a defendant's answer for insufficiency, bound to obtain an order referring such exceptions to the master?
35. What time has a defendant for referring the plaintiff's bill for impertinence?
36. What time has a plaintiff for referring the answer of a defendant for impertinence?
37. If the answer be found impertinent, within what time must the plaintiff deliver exceptions for insufficiency?
38. Can a cause be set down for hearing on further directions by a defendant?
39. If a person not a party take proceedings in a cause, and be ordered to pay to or receive from a party in the cause costs in respect to such proceedings, how are those costs recovered by or from such person?
40. Must a subpoena ad testificandum be served personally on a witness, or will the mere leaving it at his house be sufficient?
41. Are there any cases in which one party may examine another party to a suit as a witness? If so, give instances in which such examination can take place, and to what extent?
42. What affidavit must a plaintiff make on filing a bill of interpleader?
43. Can a defendant move to dismiss a bill filed for discovery only, and not for relief?
44. If a husband seek to recover property in right of his wife, will the Court impose any, and, if so, what terms on the husband in favour of the wife with respect to such property?
45. Will or will not a Court of Equity decree a specific performance of an agreement

for reference to arbitration? and give the reason for your answer?

46. A., being an attorney, agrees to sell his business to B. Is or is not this such an agreement as a Court of Equity will enforce? and give the reason for your answer.
47. If a testator by his will charge his real estates with the payment of his debts, will or will not such a devise have any, and if any, what effect on a debt which had been previously barred by the Statute of Limitations?
48. Will a tenant covenanting with his landlord to repair his premises (damage by fire excepted) continue liable on the covenant for payment of rent after the premises are destroyed by fire; or will a Court of Equity interfere by injunction to prevent the landlord from suing for the rent?

#### V. BANKRUPTCY AND PRACTICE OF THE COURTS.

49. When, and by what means, were the Court of Review, and the present Commissioners' Courts established?
50. What is the character and duty of an official assignee, and how is he appointed?
51. What acts of a trader, with any and what intent concerning his creditors, are deemed Acts of Bankruptcy?
52. What is the effect of a declaration of Insolvency, and within what time must a fiat founded thereon be issued?
53. What evasions by a trader of his creditors are deemed *absenting*, within the meaning of the statute?
54. Must the petitioning creditor's debt have been contracted before the act of bankruptcy?
55. Will a debt barred by the statute of limitations support a fiat?
56. What proceedings must be taken to obtain a fiat?
57. In case a fiat be issued on an insufficient act of bankruptcy, can it be proceeded with on some other, and what act of bankruptcy?
58. If a bankrupt be a debtor to the Crown, what steps should be taken to protect his property from process of extent?
59. Are any and what notices to be given by either party in a suit of equity, where it is intended to dispute the validity of the fiat?
60. State the steps to be severally taken, with a view to proof upon a bankrupt's estate, by *legal* and *equitable* mortgagees.
61. Is the mortgagee of a bankrupt entitled in any and what case to carry on the computation of interest on his mortgage beyond the date of the fiat?
62. Are there any and what contracts, made after an act of bankruptcy, that are deemed valid?
63. In case a purchaser from a trader has had notice of an act of bankruptcy, will the

transaction be valid after any and what length of time?

#### VI. CRIMINAL LAW AND PROCEEDINGS BEFORE JUSTICES OF THE PEACE.

64. For what offences is a private, as well as public, remedy afforded?
65. In order to a conviction for murder, must the mode in which the offence is alleged to have been perpetrated be proved?
66. Are there any and what cases of robbery punishable with death?
67. To what counties does the Jurisdiction of the Central Criminal Court extend?
68. Are the powers of the quarter sessions in the district of the Central Criminal Court restricted in any and what respects?
69. What offences are within the jurisdiction of justices of the peace at quarter sessions?
70. How many justices of the peace must be present to hold a court of quarter sessions?
71. Can any and which of the decisions of the justices at quarter sessions be reviewed? and how?
72. Of what number must a grand jury consist, and how many must agree in finding a bill?
73. What is the difference between an indictment and a criminal information? and describe the different kinds of criminal information.
74. Are there any and what malicious injuries liable to summary conviction; and is the punishment increased to any and what extent on the repetition of the offence?
75. Are there any and what conspiracies regarding which any and what number of justices of the peace have jurisdiction?
76. What is a riotous meeting, and of what number must it consist?
77. What should be done by a justice of the peace in case of a riot?
78. What is the mode of proceeding against magistrates guilty of partiality in the administration of justice?

#### RESULT OF TRINITY TERM EXAMINATION.

THE Trinity term examination took place, as appointed, on Wednesday, the 5th instant. The number to be examined was 112; but four of the candidates did not attend. We understand that some of the applicants delivered in their answers, and went away before twelve; and that a few remained till half past five. Whether the former made good speed, they and the Examiners can best tell; but we doubt the expediency of this hasty method.

It appears that the Examiners met again on Thursday, and that certificates of fitness

were granted to 105 candidates; and the answers of the remaining three were deemed unsatisfactory.

### FORM OF AFFIDAVIT TO HOLD TO BAIL UNDER 1 & 2 VICT. c. 110.

*In the Court of*

*A. B. of*                      *in the parish of*  
in the county of                      maketh oath and  
saith, that *C. D.* is justly and truly indebted to  
him this deponent in the sum of  
for [*goods sold and delivered, or money lent and*  
*advanced*] by him this deponent to the said  
*C. D.* at his request. And this deponent fur-  
ther saith that he has probable cause for be-  
lieving and doth verily believe, that the said  
*C. D.* is about to quit England unless he be  
forthwith apprehended; for deponent saith  
that he deponent did on the                      day of  
instant, meet a man-servant (whose christian  
name is                      ) who has been for some time  
past and still is in the service of the said *C. D.*  
and that the said servant then informed deponent  
that the said *C. D.* would very shortly  
leave this country and go to France, and that he  
the said servant was to accompany him; that  
the said man-servant also informed deponent  
that his master had obtained his passport, and  
that he the said servant had by the direction  
of his master, the said *C. D.*, also procured  
one to enable him to accompany his said mas-  
ter; that the said servant then took from his  
pocket and produced to and shewed to deponent  
his the said servant's passport: And deponent  
further saith that he verily believes he shall  
lose the whole of the said sum of                      unless  
he is enabled to have the said *C. D.* appre-  
hended, deponent having lately made several  
applications to the said *C. D.* for payment,  
but which have always been evaded and re-  
fused by him: And deponent further saith  
that the said servant informed deponent that  
the said *C. D.* was removing his goods from  
his house in                      in the county of

Sworn, &c.

### SELECTIONS FROM CORRESPONDENCE.

NEW ORDERS IN CHANCERY.

*To the Editor of the Legal Observer.*

Sir,

THE New Orders will doubtless afford considerable facility in recovering costs. It does not however clearly appear whether it is intended that they should have a retrospective operation, which should be the case.

It might also be convenient to extend the power to recover costs to Scotland; and power should be given to levy costs in matters of lunacy on the lunatic's estate, in cases (which not unfrequently happen) where the committee neglect or refuse to pay them.

A SOLICITOR.

### FRAUDS IN BANKRUPTCY.

A novel species of fraud has been too long practised in certain trades, which in its effect operates most injuriously on the *bond fide* creditor and creditor for a full and valuable consideration, by the system of discounts in certain trades. I shall only instance one—the ironmongery—the regular discount in which may in general be stated as subjoined—

99½ per cent.	on currycombs.
Do.	on coffin furniture.
50 per cent.	on nails and screws.
72½ do	on brass furniture.
15 do	on lamps.

So that a creditor on the first two articles, by receiving the very smallest dividend, will be in an infinitely better situation than the holder of the bankrupt's acceptance for a like amount, whereas the seller of the third article will at all events secure a dividend of 1s. in the pound on his demand, even if the dividend should be but the fractional part of a penny, as he claims to prove for the full amount, without abating 1s. for his 50½ per cent. discount; while at the same time another creditor for full value must be content with the fractional part only. This is a system which ought to be put an end to, and probably can only be remedied by legislative enactment; its hardship and injustice upon the real creditor are incalculable.

I will only add that the first article costs wholesale under 1d. a-piece, and the public are charged 2s. 6d.

CIVIS.

### ATTORNEYS TO BE ADMITTED IN MICHAELMAS TERM, 1839.

#### COMMON PLEAS.

*Clerk's names and residence.*

Purvis, Frederick, 35, Nottingham Place,  
Mary-le-Bone.

Stone, David Henry, 36, Hatton Garden.

*To whom articulated and assigned.*

James Wenn, deceased, Ipswich; assigned to  
John Dyneley, Field Court, Gray's Inn;  
assigned to John Coverdale, same place.  
Frederick Nicholls Devey, 34, Ely Place.

[For the List of *Queen's Bench* applications, see the two last Numbers.]

## SUPERIOR COURTS.

## Lord Chancellor's Court.

PRACTICE.—LEAVE TO AMEND.—MOTION TO DISMISS.—JURISDICTION OF THE MASTERS.

*The Master having refused an order for leave to amend the bill after six weeks from the time that the answer was to be deemed sufficient, the plaintiff appealed to the Vice Chancellor, before whom a motion to dismiss the bill, of which the notice was prior in time, came to be argued at the same time, and his Honor granted leave to amend, and made no order on the motion to dismiss: Held, by the Lord Chancellor, that the Masters have no power to dispense with the strict letter of the General Orders, and that the motion to dismiss was regular, but as the order to amend had been made he would allow it to stand, but the plaintiff should undertake to speed the cause.*

The plaintiff filed his bill in June 1838, claiming to be heir-at-law *ex parte paterna* to an estate, of which the defendants were in possession as mortgagees, and subject to the mortgage, one of them also claimed to be entitled to the estate as heir-at-law. Both defendants put in their answers, one in December last, the other in January. No exceptions were taken, and the time for the answers being deemed sufficient under the New General Orders in Chancery had expired. The plaintiff being advised to amend his bill, (after the time for leave to amend as of course had expired,) by inserting therein his pedigree, which was considered necessary in consequence of a recent decision of the *Vice Chancellor* (*Baker v. Harwood*),<sup>a</sup> he had a warrant taken out on the 12th of April for an application to one of the Masters in Ordinary for leave to amend. The Master, after hearing the parties on several days, finally refused the application on the 29th of April. On the 22d of April, the defendants gave notice of motion to dismiss the bill for want of prosecution for the 28th of April, but the motion was not heard on that day, the Court being engaged with other matters. After the plaintiff's application to the Master was refused on the 29th, he gave notice to the defendants of a motion before the *Vice Chancellor* by way of appeal from the Master. The two motions came together before the *Vice Chancellor* on the 8th of May, when the counsel in support of the motion for leave to amend the bill, having pre-audience, moved first, although the other motion had priority of notice. The same affidavits were read on both motions, and the *Vice Chancellor* made two orders; first, on the appeal motion for leave to amend, his Honor "ordered that the plaintiff be at liberty to amend his bill without costs within three weeks, undertaking to amend the defendants' office copies, and not to require further an-

swers:" secondly, he declined to make any order on the motion to dismiss the bill, except that the costs of that application be costs in the cause.

Mr. *Roupell*, on behalf of the defendant John Wait, was proceeding to move (by way of appeal from the *Vice Chancellor*) that the bill be dismissed as against his client for want of prosecution with costs, and that his Honor's order allowing leave to amend be discharged.

Mr. *Wakefield* took a preliminary objection—first, as to the *Vice Chancellor's* second order, that the *Lord Chancellor* had no jurisdiction to reverse or discharge it; for by the act 3 & 4 W. 4, c. 94, s. 13, it was enacted that the Masters shall hear and determine all applications for time to plead, answer, or demur, and for leave to amend bills, &c.; and that it shall be lawful for either party to appeal by motion from the order made on such application to the *Lord Chancellor*, Master of the Rolls, or *Vice Chancellor*, and that the order made on such application be final and conclusive." Secondly, he objected that there being two separate orders made on two separate motions there should be two separate notices of appeal wherever the defendant included both in one notice.

Mr. *Roupell* hoped that a question of so much importance as this would not be disposed of on such trifling objections. He had a right to argue that the motion to dismiss the bill, of which notice had been first given, ought to have been first heard, in which event it should have been allowed. [The *Lord Chancellor*.—You acquiesce in the order to amend. You admit that there is no appeal here upon that.] Mr. *Roupell* did not acquiesce in that order. He had a right to dispose of the motion to dismiss first, in this Court as he had in the Court below. He then stated from the affidavits the dates of the several proceedings, to shew that under the New Orders in Chancery the time to apply for leave to amend had expired; but the *Vice Chancellor* was of opinion that the Master had a discretion to deal with these orders.

The *Lord Chancellor*.—I have decided quite the contrary in the case of *Smith v. Webster*,<sup>b</sup> and there I expressly desired it to be understood that the Master has no power over the general orders of the Court. [His Lordship sent for the report, and read that part of his judgment.]

Mr. *Roupell*.—That case was in favour of the defendants in this case. The *Vice Chancellor* held in several cases that the Master had a power to dispense with the strictness of the orders. The plaintiff's motion was argued before the *Vice Chancellor* as an appeal from the Master, but the defendant's original motion had priority. There was nothing pending before the Master on the plaintiff's application when the defendants gave their notice of motion. The *Vice Chancellor*, in refusing their motion, ought to have put the plaintiff on terms to speed the cause.

<sup>a</sup> 7 Sim. 373.

<sup>b</sup> 3 Myl. & C. 244, and 15 Leg. Obs. 233.

Mr. Wakefield and Mr. Shebbeare, for the plaintiffs, after partly restating the above-mentioned objections, said that the decision in the case of *Smith v. Webster* was upon exceptions to an answer, which distinguished it from this case. The Vice Chancellor held in *Milbank v. Stevens*,\* that the Master had jurisdiction under the 13th sec. of the act 3 & 4 W. 4, c. 94, to make an order to amend after the time limited by the 13th general order of 1831. At all events, the order of the Vice Chancellor, whether right or wrong, upon an appeal from the Master, was "final and conclusive," under the act of parliament. The amendment to be introduced in the bill was only a formal amendment. The draughtsman was not at first aware of the decision in *Baker v. Harwood*. The application to the Vice Chancellor was in the nature of an original motion for leave to state the plaintiff's pedigree in the bill, instead of incurring the expense of filing a supplemental bill; and the question before his Honor was, how far it was reasonable to give leave to amend. The plaintiff did not discover his mistake until the 12th of April, and he then took out a warrant to attend his application before the Master, who did not give his final decision till the 29th. [Lord Chancellor.—What do you say to the 16th order?] Supposing we were not bound by that order, we had a right to apply to the Vice Chancellor. We submit that under the circumstances it was reasonable to have leave to amend, and the Vice Chancellor had a right to hear the motion to amend before the motion to dismiss; and when leave to amend was given the motion to dismiss necessarily fell to the ground. The notice of that motion was ten days later than the date of the plaintiff's warrant for applying to the Master for leave to amend. The defendant's present notice of motion is multifarious.

The Lord Chancellor said it appeared to him that the defendant was quite regular in his application to dismiss the bill, the time required by the 16th order, after the answer was deemed sufficient, having expired. Then the plaintiff had to correct the error into which he fell in the drawing of his bill; it was his own error, and he tried to correct it by an erroneous proceeding. The master had no jurisdiction to give leave to amend contrary to the general orders. And when the defendant gave notice of his motion to dismiss, there was no proceeding then before the Court to prevent him from so applying. It would therefore be going too far to deprive the defendant of what he was justly entitled to at the time of his notice of motion. But as the plaintiff had obtained his order to amend, let that order stand upon his giving an undertaking to speed the cause.

*Lloyd v. Wain*, at Westminster, May 22d, 1839.

\* 8 Sim. 160.

### Equity Exchequer.

#### PRACTICE.—ORDER TO AMEND.

*After a defendant's answer was put in, the plaintiff obtained an order of course to amend his bill, and on the eighth day from the date of that order the defendant moved that if the plaintiff should not amend within a week his bill might be dismissed. Ordered that the plaintiff amend within three weeks from the date of his order, in conformity with the practice in the Court of Chancery. (See 14th Order, 1828 and 1831.)*

This was a bill filed last November against a husband and wife, for discovery and relief against the wife's separate property, out of which the plaintiff claimed payment of an alleged debt for money, which he said he had advanced to her on several occasions, on the faith of payment out of her separate property. The wife, living apart from her husband, put in a separate answer, denying the debt altogether, but admitting that she had sometimes received monies from the plaintiff to discharge debts on his account. The plaintiff being advised to amend his bill, obtained the common order for that purpose on the 22d of May.

Mr. Simpfkinson (on the 29th of May) moved for an order that the plaintiff amend his bill within a week, or that it be dismissed.

Mr. Elderton, for the plaintiff, opposed the motion, and contended that it ought to be refused, with costs. It was not reasonable to expect that the plaintiff could make the necessary amendments in his bill within a week. The Court of Chancery, by the 14th of the New General Orders of 1828, amended in 1831, allowed three weeks to a plaintiff to amend in these circumstances. In this Court there was no settled practice on the subject.

Mr. Baron Alderson.—The time for amending was defined by the Orders of the Courts of Chancery, with the view of restraining the enormous evils caused by delays of this kind. As there was no fixed practice on the subject in this Court, it became the more necessary to make an order in this case which would be generally applicable, and he would do that by adopting the order of the Court of Chancery, and as the motion was a reasonable one he would make the order without costs. The order is that the plaintiff amend in three weeks from the date of his order for amendment.

*Fraser v. Palmer*, at Westminster, May 29, 1839.

### Queen's Bench.

#### [Before the Four Judges.]

#### BILL OF EXCHANGE.—ACCEPTANCE.

*Two persons taking a bill, which appeared to be accepted by A., went to the house of A. and shewed it to him, and he said that it was his acceptance. Upon the faith of this representation, one of them discounted it, and it was regularly indorsed to him. The bill was not paid, and he brought his action upon it against A. The defendant pleaded*

*that he did not accept, and the defence set up was, that the bill had been accepted by A.'s son as his own bill. The learned Judge who tried the case told the jury that a person might become liable as acceptor by accepting a bill in his own handwriting, by authorizing another to accept it for him, or by ratifying such acceptance, though made without his prior authority, and left it to them to say whether in fact A. had made himself liable in any of these three ways. Held, that the direction was right, and that the Judge was not bound to leave it to the jury to say whether A.'s son had accepted the bill for himself.*

This was an action by the indorsee against the acceptor of a bill of exchange, payable three months after date: the defendant pleaded that he did not accept. The cause was tried at the Sittings in this present term before Mr. Justice Coleridge, and a verdict was found for the defendant.

Mr. Theobald moved for a rule to shew cause why there should not be a new trial on the point of misdirection. He stated that the bill was dated on the 28th of May, 1838, and was addressed to the defendant at the place which was undoubtedly the defendant's residence. The plaintiff called two witnesses, one of whom stated that at a little public house at Westminster, he had been requested to discount a bill, and had been promised to do so, if there was a good name upon it; that the bill was produced with the defendant's name upon it, and that he and the other witness took the bill to the defendant's house, and shewed it to the defendant, who said it was his acceptance. This statement was corroborated by the person referred to. On the part of the defendant, his son was called, and stated that he had accepted the bill for himself; that he never had accepted bills for his father; and that he had no authority to accept this particular bill for his father. The learned Judge told the jury that a person might make himself liable as acceptor, either by writing the acceptance with his own hand—by authorizing another person to write his name as acceptor—or by ratifying an acceptance made without prior authority; and he directed them to find for the plaintiff, if they believed that the defendant had adopted the acceptance. The case went to the jury, partly on the question of the credibility of these witnesses, and partly on this direction, and the jury having found for the plaintiff, must be taken to have believed that the defendant had represented the bill to be his acceptance. Upon the evidence which was given on behalf of the defendant, the questions now submitted to the Court arose. In the first place, the question was, whether under the circumstances stated, the bill could in point of law be said to be the defendant's acceptance. It was clear that if a stamp was once appropriated by A. as the acceptor, so as to make A. liable, B. could not by an adoption of the acceptance remove the liability of A., nor make himself liable. Here the defendant's son had appropriated the stamp

to his own use, and had thereby incurred a liability on it. That was a substantive act, which could not by adoption become the act of the father. In the next place, therefore, it was submitted that the question which ought to have been put to the jury was, not whether the defendant had adopted the acceptance, but whether the jury believed that the defendant's son had accepted the bill for himself. The learned Judge in leaving the case as he had done, had therefore misdirected the jury, and the defendant was entitled to a new trial.

The Court intimated that the point contended for was untenable; and that a person who had admitted an acceptance to be his, could not afterwards defend himself on the ground that it was the acceptance of another person.

Rule refused.—*Ansell v. Andrews*, T. T. 1839. Q. B. F. J.

#### ATTENDANCE OF WITNESSES.—COSTS, TAXATION OF.

*Where an official document is required to be produced in evidence, the Master may properly allow in taxation a sum charged in respect of the attendance of the officer of the Court who produces it.*

*The Master may also properly allow for the attendance of witnesses who are subpoenaed to translate old records.*

The Attorney General shewed cause against a rule calling on the Master to review his taxation of costs. The affidavits on which the rule had been obtained stated, that several witnesses had been called to prove one document, and that some of these persons were translators of ancient records of the courts. It was insisted that the costs of these witnesses ought not to be allowed. There was also an allowance to an officer of the Court of Chancery who attended to produce affidavits from the files of that Court; this was likewise objected to, yet it was clear that the allowance was proper. As the officer of the Court, he alone had the proper custody of the affidavits, and it was necessary to have these affidavits in order to check the evidence of some of the witnesses produced at the trial. As to the persons who had translated the old records, there could be no doubt that their evidence was most necessary in order to assist the Court to a true knowledge of the facts of the case, some of which entirely consisted of the acts of parties in former times, in passing fines and recoveries, taking inquisitions, and other proceedings of a similar sort.

Mr. Erle in support of the rule.—Some of these witnesses were quite unnecessary, and the costs of the translation of records ought not to have been allowed. It may be proper enough to have interpreters of foreign languages, because judges and jurors are not presumed to be acquainted with those languages; but it is not necessary to have translators of the ancient records of the courts, for the courts must be presumed to understand the language which was employed in them in former



times; and the judge ought to be able to direct the jury on the effect of these records. The law therefore cannot recognise these witnesses as necessary.

Lord Denman, C. J.—(In the whole it seems to me that this case does not come within any of the rules which require us to interfere with the Master's discretion. The attendance of the officer of a court to produce a document from that court cannot be objected to, if that document is necessary. It is perfectly true that the judge ought to be able to direct the jury, but it is for the convenience of all parties that these persons who are peculiarly learned in these matters of ancient records should give their assistance to the Court. The convenience is sufficiently great to amount to a justification of necessity. There is no ground for our interference with this taxation.

Rule discharged.—*Ashton v. Smith*, T. T. 1839. Q. B. F. J.

### Common Pleas.

#### ATTACHMENT FOR NON-PERFORMANCE OF AWARD.—NOTICE OF ENLARGEMENT OF TIME.—DISAGREEMENT OF ARBITRATORS.—POWERS OF UMPIRE.

*Where, in a bond of submission to a reference, it is provided that the arbitrators may enlarge the time for making their award, and that in the event of their not agreeing, an umpire shall proceed to award, with a like power of enlargement: Held, that notice of an enlargement by the umpire before the power to award was vested in him by the non-agreement of the arbitrators, was sufficiently notified to the defendant by his being verbally informed of it by the plaintiff, at the time of his calling upon him to perform the award; that the power of the umpire to enlarge the time was not delayed, until, by the disagreement of the arbitrators, he was empowered to enter into the case, and make an award; the time originally fixed for his making his award being antecedent to that to which the arbitrators had eventually enlarged their own time; and that the arbitrators having omitted to make their award, was a sufficient proof of their non-agreement, so as to entitle the umpire to act. Certain matters being referred to the umpire, in some of which the defendant was absolute possessor of the property upon which the dispute arose, while in others he only held a share, an award, directing him to do certain works in respect of the whole matters, but with regard to that portion of them in which he had only a share, providing that the directions of the award should go only so far as his interest extended; Held good, and that proof on the part of the defendant of his inability to perform the works latterly specified, would be sufficient to exempt him from the performance of the award in that respect.*

This was a rule calling upon the defendant to shew cause why an attachment should not

issue against him for the non-performance of an award, made against him by the umpire, to whom all matters in difference had been referred.

The bond of submission to reference recited that the defendant was proprietor or holder, among other premises, of divers weirs, or hatches, erected at different times, in and upon a certain river in the county of Somerset, and also of certain banks or pieces of ground adjoining the said river; and also of certain weirs across the said stream, and certain hatches called or known by the name of Marsh Mill Weir, and Bailward Weir, and the Horse Croft Hatches, and also to a certain share or shares, or other right or interest in or to other hatches over a certain river called Wincanton river in the said county; and that the plaintiff was also owner of certain lands adjoining thereto, and that disputes and differences having at different times arisen between the plaintiff and defendant in respect of the said weirs or hatches, and certain damages having been sustained thereon by the plaintiff, he had proceeded before the Commissioners of Sewers to procure the prostration and removal of the said weirs, hatches, &c.; and that on the complaint coming on to be heard before the said commissioners, it was agreed that the matters so in dispute, and the presentment before the said commissioners between the said plaintiff and defendant should be referred to two arbitrators, or their umpire, who was appointed; and that the said arbitrators or their umpire should decide what should be done by the said parties or either of them, or what works should be carried on in respect to the matters referred, and should order and direct any fence to be made, or any other works to be done which should be proper or necessary for the regulation of the said channel waters; and it was further agreed that the parties were to abide by any award which should be made by the said arbitrators, on or before the 20th of August then next ensuing, or such other day as the arbitrators should appoint; but that in case the said arbitrators should not be able to agree in their award, the parties should then obey any award that the said umpire might make on or before the 20th day of September then next ensuing, or such other day as the said umpire by writing under his hand should direct and appoint, such enlargement of the time for the making of the said award to be made by three days notice in writing. There was also a subsequent undertaking that in case of the disagreement of the arbitrators, the umpire should proceed *ex parte*.

The affidavits on which the rule had been obtained, stated that the arbitrators, on the 14th August, had enlarged the time for making their award until the 2d of October; and that on the 28th of September they had also enlarged it to the 1st of November; and that the umpire had also enlarged the time from the 17th of September to the 1st of December, and on the 26th of November, from that date to the 20th of December. That the award was made before the last mentioned day by

him, and that subsequently a demand being made upon the defendant, in conformity with the terms of the award, for one half the amount of costs incurred, he paid it; but subsequently, on the 28th February, he wrote a note, saying that he had no idea that the umpire had enlarged the time, and that therefore he should not perform the award: that subsequently, on the 28th of April, the plaintiff personally served him with a copy of the award, and required him to perform it; but that the defendant refused to do so on the same ground that the umpire had not duly enlarged the time, and that thereupon the plaintiff informed him that the umpire had enlarged the time on the 17th of September.

The award stated the fact of the presentment to the Commissioners of Sewers and the other preliminary matter contained in the bond of submission, and then went on to allege that the said arbitrators duly entered upon the business of the said award, and proceeded to the examination of the witnesses, but that not being able to make an award on or before the 20th August, in pursuance of the powers given to them, they did, by writing under their hand, on the 14th of the said month of August, enlarge the time for making their award until the 2d day of October then next ensuing and now last past, and that the said arbitrators having on the 28th day of September then next following, by writing, &c. further enlarged the time, &c. to the 1st day of November, &c. and then being unable to come to any agreement upon or concerning the premises in the several matters referred to them, they, on the 2d October last past, gave notice to the umpire that there was no probability of their making any award, whereupon he, in pursuance of the powers vested in him as umpire, at the request of the arbitrators, and prior to the said 1st day of November, did duly enlarge the time for making his award until the 1st day of December next following, and that subsequently he did, in pursuance of the same power, on the 26th of November, by writing, &c. duly further enlarge the time, &c. until the 20th day of December instant, when he made his award; and he then proceeded to order and direct that on or before the 1st day of March next following there should be removed by and at the expense of the defendant certain hatches, to wit, &c. which said hatches should never again be restored by the defendant, nor should any others be erected in their place or on or near the sites thereof; but it was further directed that the award should relate only to such share, right, or interest as the defendant should have, or might hereafter become possessed of in respect of the said hatches.

Sir F. Pollock and Kinglake now shewed cause, and objected, first, that the defendant had not had sufficient notice of the enlargement of the time for making the award by the umpire. The only proof of notice was in the affidavit, in which it was sworn that at the time of the service of the copy of the award on the 28th of April, the plaintiff had informed

the defendant that the time had been enlarged on the 17th of September. The enlargement, however, had not been properly made by indorsement on the submission, but merely by a private memorandum made between the arbitrators. It was urged that the defendant was entitled to have a copy of the written paper by which the enlargement was made served upon him. *Davis v. Vass*, 15 East, 97. The date of the enlargement by the umpire was not mentioned in the award, and the only notice given to the defendant of it was at the time of the service of the copy of the award.

Secondly, it was even doubtful whether, supposing that the enlargement had been made on the 17th of September, it was in the power of the umpire to take that step. The arbitrators were proved to be dealing with the matter at all events up to the 28th of September, if not to the 2d of October; and the power of the umpire could not be said to commence until that of the arbitrators ceased. *Barton v. Ransom*, 6 D. P. C. 384; S. C. 3 Mees. & Wel. 322; and *Dickins v. Jarvis*, 5 B. & C. 528, were alluded to on this point. These objections, it was submitted, were not matters of form only, but affected the substantial matter before the Court; for it was for the plaintiff, who sought to bring the defendant into contempt, to shew distinct and proper grounds for his motion. Even supposing the award contained any allegation of the enlargement of the time, that would not be sufficient notice, because it could be taken as proof of nothing but the judgment of the umpire.

Thirdly, the umpire had no right to interfere, unless in the case of the disagreement of the arbitrators, and the fact of the disagreement ought to be proved by affidavit. *Sprigens v. Nash*, 5 M. & Sel. 193, shewed that where the umpire was directed to interfere in case of the disagreement of the original arbitrators, that disagreement was necessary to give the umpire the power to act. The mere allegation of disagreement on the face of the award was insufficient, but it should be shewn to have taken place by affidavit.

Fourthly, the award upon the face of it decided matters which in the submission, it was admitted, were not within the jurisdiction of the arbitrators; for although by the submission it appeared that the defendant possessed only a share of some of the hatches or weirs, yet the award ordered them all to be removed by him and at his expense. The award was not binding upon the defendant as to a part, and was not binding therefore in any respect. The defendant could not perform the award, for he was called upon to perform certain matters which were not under his controul, and therefore this rule ought not to be granted. In case, however, that the attachment should issue, how could his imprisonment terminate?

*Tindal*, C. J.—He might give his consent as to his share of the weirs.

*Collman*, J.—It would be for him to serve notice upon the plaintiff that he was willing, as far as he was able, to perform the award

and to pay the expense, and that would be a sufficient performance of the award.

Sir F. Pollock.—The award required the hatches to be removed before the 1st March; and that, therefore, would be an insufficient performance of its provisions.

Tindal, C. J.—But then it goes on to say that this part of the award shall only apply to the interest which the defendant may or shall have. Therefore, all that he can do is to say that he consents to the removal of the hatches.

Sir F. Pollock.—The plaintiff was bound to shew that the defendant was in a condition to perform the award, and if he could not shew that, he was not entitled to this rule. Although the rest of the award might be good, yet the plaintiff was not entitled to come to the Court to require it to put its criminal jurisdiction into operation, where a portion of it could not be performed. *Mac Arthur v. Campbell*, 2 Ad. & Ellis, 52, was cited.

Wilde, Serjeant, Bere, and Butt, in support of the rule. The defendant by paying his share of the costs under the award had adopted its provisions, and had waived any objections he might have to it.

As to the notice of enlargement, there was no case in which the Court had held that the defendant was entitled to notice of enlargement until the award was made, and as the affidavits here proved the enlargement to have been duly made, and the defendant to have been informed of it when the award was served, the objections on this ground against the granting of this rule could not be maintained. *Re Bower*, 1 B. & C. 264, shewed that the conveyance of knowledge of the enlargement to the defendant was enough.

The term "disagreement" used in the submission did not signify an absolute disagreement, but simply the non-agreement of the arbitrators. *Watson on Awards*, p. 81.

As to the objection to the award, when an award ordered several things to be done, the party defendant might show any reasons to the Court which prevented his doing them, and the award was not bad because he could not do them. The defendant here, however, had shewn no reason why he could not perform the award, and the Court could not conjecture his inability, nor could they guess at the extent of the authority of the defendant by looking at the award. Such grounds as were set up here in answer to this motion might be grounds of application for a rule to set aside the award, but the Court could not now act upon them. *Holland v. Brooks*, 6 T. R. 161. The Court, therefore, would not hesitate to grant the attachment prayed, more especially as it would at all times be in the power of the defendant to discharge it, upon his shewing that he had sufficiently performed the award.

Tindal, C. J.—It appears to me that the objections which have been urged against the issuing of the attachment in this case have been well answered. The first objection made is that the regular enlargement of the time by the umpire, by whom the award was made, was never communicated, or that no proper notice

was given of it to the party. Now the case of *Davis v. Vass*, shews that in order to obtain an attachment for the non-performance of an award, if it be not made within the time originally granted, two things are necessary; first, it must appear by affidavit, that the time was actually enlarged in the manner allowed by law; and secondly that notice of the enlargement was given to the party against whom the attachment was required to issue, before the time at which the award is to be performed. Notice is all that is referred to, and I think that the notice which was verbally given on the 13th April was sufficient. When that notice was given the defendant did not say either "this is not the notice which I expected" or, "give me a copy of the original writing," and it seems to me that the principle laid down in *Re Bower*, that knowledge of the enlargement of the time being brought home to the party is sufficient, must be applied to this case. The second objection is, that in order to enable the umpire to make this award and to justify this motion, the arbitrators should be shewn to have disagreed, and their disagreement should have been judicially made known to the umpire. Now this turns much upon the meaning of the term disagreement, and it is said, that unless there was a disagreement, the umpire never had authority to act at all, and that he has no power to make this award. Now looking at the terms of the bond of submission, I think that the word "disagreement" there is to have precisely the same meaning as non-agreement. In one part of the bond it is expressly said, that if the arbitrators "do not agree" in their award the case is to go to the umpire; and it appears abundantly on the face of the proceedings that they did not agree; for the fact of no award having been made until after the time limited had expired, and of the award having in fact been made by the umpire, amounts at least *prima facie* to information to the court that they had not agreed. The third objection is, that the umpire never had any power at all to make his award, because there was no disagreement between the arbitrators before the 20th September, as to which the terms of the reference were that the arbitrators should make their award on or before the 20th August, but in case of their dissent, (or non-agreement) the umpire should have the power to make his award before the 20th September; then there is power given to each to enlarge the time, and it appears that the arbitrators finding that they could not agree before the 20th August, enlarge the time until September, and then comes the umpire and enlarges his time until a month later, and then again each of them throw the time over for a month. Then unless we were to say that the reasonable mode of carrying the intentions of the parties into effect is to be thwarted by nice distinctions, I think we must say that the umpire in the course which he pursued, adopted that line of conduct which was best calculated to carry the intentions of the parties into effect. This brings us then to the last objection, which is, that a part of the award is either out of the power of the defendant to perform at all,

or is out of the authority of the umpire to order. Now I do not distinctly see that it is out of the defendant's power to perform. We have no affidavits to shew that such is the case, and all turns upon the construction to be put on the terms of the references. It is said that the defendant is the proprietor of certain hatches; and then it is said with respect to certain others that he had a share or shares, or other right or interest in them. The umpire has taken upon himself to decide with respect to two of the first, that they shall be prostrated, and also with respect to a third hatch, in which the defendant is said only to possess a share, that that shall also be prostrated within a given time; and then he says, that he makes the award only to extend so far as any right or interest which the defendant may possess. It appears to me then that when this investigation was going on before the umpire, these uncertain words in the submission were taken by him to apply only in their limited extent to one of the weirs, and not to all of them, and he therefore has made his award, so as not to leave the defendant open to an action of trespass; and most undoubtedly if it shall appear that as regards those matters to which this attachment goes, the defendant will be liable to perform in the award, that of itself will be a sufficient answer to that part of it; but if several matters are referred to an arbitrator, and are directed by him to be performed, it is no sufficient answer to a motion for an attachment to say, that one of them might subject the party to an action, if nothing has been done by him to shew his willingness to perform the award.

Therefore this rule must be absolute; but the attachment may be in the office for one month.

*Vaughan, Colman, and Erskine, J J. concurred.*

Rule absolute.—*Doddington v. Bullward.* T. T. 1839. C. P.

## COMMON LAW SITTINGS,

### Queen's Bench.

*Trinity Term, 2d Vict., 31st May, 1839.*

This Court will on the 13th day of June next, hold Sittings, and will proceed in disposing of the business in the *New Trial Paper* on the 13th, 14th, 15th, 17th, 18th, and 19th of the said month, and in the *Special Paper* on the 20th and 21st, and in the *Crown Paper* on the 22d of June, and on the last-mentioned day will give judgment in cases previously argued.

*At Nisi Prius—After Trinity Term, 1839.*

### MIDDLESEX.

Thursday, June 13 { For Causes with Judgment, if, &c. only.

Wednesday July 3 { Adjournment day, Common Juries.

Thursday .. 4 }  
Friday .. 5 } Common Juries.  
Saturday .. 6 }  
Monday July 8 }  
Tuesday .. 9 } Special Juries.  
Wednesday .. 10 }

### LONDON.

Friday June 14 { For Causes, with Judgment, if, &c. only.  
Monday .. 24 { Adjournment day, Common Juries.  
Tuesday .. 25 }  
Wednesday .. 26 } Common Juries.  
Thursday .. 27 }  
Friday .. 28 }  
Saturday .. 29 } Special Juries.  
Monday July 1 }  
Tuesday .. 2 }

### Common Pleas.

*Trinity Term, 2d Victoria,  
Saturday, 1st June, 1839.*

This Court will, on the 13th day of June instant, hold Sittings, and will proceed in disposing of the business now pending in the paper of *New Trials*, and in the *Special Paper* of this Court on the same 13th, and on the 14th, and 15th days of June following, and also on the 19th and three following days of the same month, commencing with the Country New Trials.

### Exchequer of Pleas.

*Trinity Term, 2d Victoria,  
Thursday, 30th May, 1839.*

This Court will, on the 13th day of June next, hold sittings, and will proceed in disposing of the business in the *Special Paper* on the same day, and on the following day, namely, the 14th of June; and on the same 14th day of June, and on the 15th, 19th, 20th, 21st, and 22nd days of the same month will proceed in disposing of the business now pending in the paper of *New Trials*.

## LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

### Royal Assent.

4 June, 1839.

Seditious Societies.  
Purchasers' Protection.  
Designs Copyright Extension.

**House of Lords.**

To improve the Practice and Proceedings in the Court of Pleas of Durham.

To enable Justices of Assize on their Circuits to take inquisition of all Pleas in the Court of Exchequer of Pleas, without Special Commission.

[For 3d reading.]

Belper Small Debts Court Bill.

**House of Commons.****ADMINISTRATION OF JUSTICE.**

To improve County Courts.\*

[In Select Committee.] Lord John Russell.

For holding District Sessions of the Peace.

[For 2d reading.] Lord John Russell.

For keeping and authenticating non-parochial Registers of Births, Deaths, and Marriages.

[In Committee.] Lord John Russell.

For regulating the Police Courts in the Metropolis.

[In Committee.]

For the better ordering of Prisons.

[In Committee.] Lord John Russell.

To regulate and enlarge the Summary Jurisdiction of Justices.

Lord John Russell.

[In Committee.]

For further improving the Police in and near the Metropolis.

Mr. F. Maule.

[For 2d reading.]

Small Debts Court Bills for the following places:—

Aberford,	Newark.
Bury, (Lancashire)	Newton Abbot,
Chesterfield,	Nottingham,
Eckington,	and
Glossop,	Mansfield,
Grantham,	Oldham,
Halifax, Hudders-	Pontefract,
field, & Bradford	Rochdale,
• Hatfield,	Rotherham,
Kingsbridge and	Tavistock,
Dodbrooke,	Warrington,
Leeds,	West Ham,
Liskeard,	Worksworth,
Liverpool,	Yorkshire.

To enable the Justices at Quarter Sessions to appoint a Clerk of the Peace in certain Cases. [In Committee.] Mr. Pakington.

To abolish Grand Juries. Mr. Pryne.

For regulating the mode of establishing Rules of Proceedings in the Borough Courts of England and Wales. [Passed.]

To amend the Law relating to double and treble Costs, to pleading the General Issue, and as to Notice and Limitation of Actions.

[In Committee.] Sir F. Pollock.

To amend the Law relating to the Custody of Infants.

[In Committee.]

Mr. Serjt. Talfourd.

\* The Select Committee on this Bill consists of Sir George Grey, the Solicitor General, Mr. Erle, Major Wood, Sir Edward Knatchbull, Mr. Hawes, Mr. Miles, Sir J. Y. Buller, Mr. Aglionby, Sir F. Freemantle, Mr. Handley, Sir James Graham, Mr. Wilbraham, Sir Charles Lemon, Lord Barrington.

To amend the Imprisonment for Debt Act, as to Advertisements.

[In Committee.] The Attorney General.

**LAW OF PROPERTY.**

To amend the Law of Copyright.

[In Committee.] Mr. Serjt. Talfourd.

For the Enfranchisement of Lands of Copyhold and Customary Tenure.

[In Committee.] Mr. James Stewart.

For securing the Benefit of Inventions in Arts and Manufactures.

Mr. Mackinnon.

To render the Owners of Small Tenements liable to the payment of Rates assessed thereon.

Mr. Robert Gordon.

[In Committee.]

**LAW OF ELECTIONS.**

For the registration of Parliamentary Electors.

[In Committee.] Mr. Attorney General.

Controverted Elections.

Lord Mahon.

[For 2d reading.]

To amend the jurisdiction for the Trial of Election Petitions.

Sir R. Peel.

[For 2d reading.]

For assimilating the qualification of Electors as Voters for Coroners to that of the constituency of members of Parliament, and taking the Poll at Election for Coroners in one day.

Sir H. Fleetwood.

For extending the qualification of Voters for members in Parliament representing Counties, to the occupiers of houses of the clear annual value of 10*l.* as in Boroughs.

Sir H. Fleetwood.

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To prevent persons from losing their votes at an election by removal after the preceding Registration.

[In Committee]

Mr. Gibson.

**SHERIFFS;—HIGHWAYS;—SEWERS.**

To amend the Laws relating to Highways.

[In Committee.]

Mr. Barneby.

To alter and amend the Laws relating to Sewers.

[In Committee.]

Mr. Christopher.

To regulate the expences to be incurred by persons serving the office of High Sheriff in England and Wales. [In Committee.]

**THE EDITOR'S LETTER BOX.**

We have been enabled to give all the Questions put at the recent Examination, and though not in every instance in the exact terms, our readers may rely that they are substantially correct.

The letter of T. B. C., and several on Attorneys wearing gowns, have been received.

"An Articled Clerk," who asks "how soon after passing an Examination it is necessary to be admitted an attorney? and how soon after being admitted it is necessary to take out a certificate?" is informed that the time may be enlarged by a Judge; otherwise the admission must take place the term next following the examination. According to several cases which we have frequently referred to, if the party does not practise, he need not take out a certificate.

# The Legal Observer.

SATURDAY, JUNE 15, 1839.

— “ Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT

## THE NEW EQUITY ARRANGEMENTS.

THE important subject of the present state of the arrears in Equity was brought before parliament by Lord Lyndhurst on Friday the 8th instant, and we have never heard a debate conducted with greater temper, ability, and moderation on all sides. For once, Reform in Chancery was discussed in a spirit almost entirely unclouded by party feeling, and with a sincere desire to meet the necessity of the case. The grievances of the suitor and the public were admitted by all. No attempt was made to disguise or conceal the immense arrear of business, or its lamentable effect on the suitor. The existing state of things was allowed by the Lord Chancellor to be intolerable, and Lord Langdale considered that the evils had even been understated by Lord Lyndhurst. “The arrears of the Court of Chancery,” said his Lordship, “constituted an enormous and intolerable grievance, as observed by his noble and learned friend opposite, which ought to be got rid of as soon as possible. He believed that his noble and learned friend had understated the case, notwithstanding the clear and forcible manner in which he had brought it forward.” The details of this grievance are familiar to our readers. We have been labouring in the cause for the last five years, and since last November more especially, we have thought it right to devote much space and constant attention to the subject. At the commencement of the four last terms we have brought forward the exact state of the arrears in each of the three Courts of Equity from authentic sources, and we have shewn that so far from any decrease having been made, the arrear is on the increase. Does this arise from the in-

attention of the Equity Judges? Certainly not. Judges more laborious or pains-taking, who give more of their time to the judicial duties, never sat on the bench. They are in fact overworked, and this to the injury of the suitor. This was well put by Lord Lyndhurst, “I believe,” he said, “that they exercise more time and more energy upon it than any country ought to require of its judges. I am one of those who think that a judge should not occupy his mind totally with the administration of justice. There is not any pursuit which does not tend, if a man devotes himself exclusively to it, to narrow the intellect and contract the understanding. A judge ought to look abroad, and cultivate literature and science; for the lights they so acquire, reflect back on the bench, and afford force and vigour to the judgment they pronounce.” Let us contrast this with the Lord Chancellor’s account of the mode in which the time of the present judges is employed, and we shall see how much time they have for any other pursuits. “In communicating with the Vice Chancellor on that day,” he said “he found that he had commenced his labours for the day at four o’clock in the morning, the very hour at which he (the Lord Chancellor) had concluded his labours of the previous day, so that the Court of Chancery, it might be said, was up all night.”

But we think it unnecessary to occupy any further space in shewing either the magnitude of the present arrear, or the insufficiency of the present judicial power to dispose of it. If no new business were set down, it would require at least three years to dispatch the business now before it. Let us therefore turn to the remedy proposed. Lord Lyndhurst considers that two new judges should be appointed; one in the Court

of Chancery, and another in the Exchequer to dispose of the Equity business there, and to preside in the Privy Council, but he is unwilling to go further than this. When pressed as to the difficulty that this plan might probably increase the appeals to the Lord Chancellor, he said, that if this were so, he would provide a remedy; but he did not feel disposed to provide for it before he was certain that it would occur. He was also asked whether it would not be better to have both of the new judges in the Court of Chancery, rather than continue the Equity jurisdiction in the Court of Exchequer? but this he seemed unwilling to do. It will be seen, therefore, that Lord Lyndhurst's plan leaves untouched what have always appeared to us two of the great evils of the present system—the exposing the suitor to the Keeper of the Great Seal to the chances of political contention, and the unsatisfactory state of the appellate jurisdiction of the House of Lords.

The Lord Chancellor and the Master of the Rolls went further. The Lord Chancellor declared that he adhered to his opinions as formerly expressed, and to his former plan; and Lord Langdale boldly supported the doctrine of separation to its fullest extent. "In his opinion they ought to separate the judicial from the political functions of the Lord Chancellor altogether. It was impossible that he could perform both efficiently. He also thought that they could not have a perfect remedy for all the grievances at present existing in the Court of Chancery unless they had a constantly sitting Court of Appeal in that House, independent of the Judges of the Court of Chancery." However, both their Lordships admitted that they must look not merely to what they would wish, but to what might be carried. The Lord Chancellor said he would gladly accept any thing as a palliative; he would not object to a proposition merely because he did not think it sufficient; he should be glad to have it if it did something, though more might be required; but both his Lordship and the Master of the Rolls guarded themselves against any admission that the appointment of one, or even of two judges, would be a satisfactory and final settlement of the question. The result of this very interesting and important debate was, that as Lord Lyndhurst, in our opinion with great propriety, declined to introduce a bill himself for the appointment of a Judge, the Lord Chancellor agreed to do so, with the consent of all parties present. We do not know whether we are to include Lord Brougham in this understanding, as he left the House

after having spoken, and without, we think, acceding distinctly to the proposition. We may here say, by the way, that it was quite unnecessary for his Lordship to defend his judgments when Chancellor: they are most able and instructive, and are admitted to be so by the profession.

We now, therefore, wait to see the proposed bill. We also humbly venture to say, that if it merely goes to the proposed extent, it will not go far enough; still, under all the circumstances of the case, and considering the state of the session, we shall be glad to see two additional Judges appointed, as perhaps the only practicable course, especially as it is not pretended to be a settlement of the question. Whether both of these Judges should be in the Court of Chancery, or one in Chancery and the other in the Exchequer, is the next point to be considered.

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## THE LAW OF ATTORNEYS.

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### TAXATION OF COSTS.

WE have from time to time collected the law relating to the taxation of costs; see 1 L. O. 299, 397; 7 L. O. 164, 264; 8 L. O. 25; 11 L. O. 335; 12 L. O. 17; 14 L. O. 372, 405; 16 L. O. 135, 225, 384. We now add the following case:

In this case the defendant having become bankrupt, *Alderson, B.*, at the request of the assignees, made the following order:—"I do order that *Mr. A.*, the defendant's late attorney, do, within three weeks, deliver to the attorney for the assignees of the defendant, his bill of costs in this and other actions, including those of a judgment obtained against *B. C.*; the same when delivered, to be referred to the Master to be taxed, the attorney of the assignees undertaking to pay him, from time to time, a rateable dividend of the money due to him, if any, and reserving to him any lien to which he may be entitled, the said *Mr. A.* to give credit for all sums of money received by him, &c." *Humphrey* had obtained a rule *nisi* to set aside this order, on the ground that the learned Judge had no authority to order the delivery of a bill, except upon an undertaking to pay the whole amount. *Parke, B.* said an attorney is an officer of the Court, and I see no reason why the Court should not compel him to let his client know what claim he has against him. When the client has once got a signed bill, then he may consider whether he will have it taxed upon an undertaking to pay the balance. I have not the least doubt about the right of the client to have a signed bill, and the only question is as to the assignees, and it is difficult to see any distinction between their rights and his. So much of the order as relates to the taxation of the

bill, and to the undertaking, must be struck out, and the rule must be discharged as to the rest. *Alderson, B.*—At common law an attorney had a right to have his bill settled by a jury. The 2 Geo. 3, c. 23, restrained that right by giving the client an opportunity of taxing the bill. But the statute has no reference whatever to the power of the Court to order an attorney to deliver a bill or account for money received; it is merely restrictive of the right of the attorney to go to a jury. *Gurney, B.*—Formerly there were two orders, one to deliver the bill, and another to have it taxed. I cannot see any hardship in embodying the whole in one order, more especially as it is the practice to allow, on taxation, for making out the bill of costs. Rule discharged, except so far as relates to the taxation of the bill, and the undertaking to pay.—*Clarkson v. Parker*, 7 Dowl. 87; S. C. 4 Mee & Wels. 532.

## CHANGES IN THE LAW

IN THE PRESENT SESSION OF PARLIAMENT.

### No. 1.

2 Vict. c. 11.

#### PROTECTION OF PURCHASERS.

*An act for the better Protection of Purchasers against Judgments, Crown Debts, Lis pendens, and Fiats in Bankruptcy.*

[4th June 1839.]

1. *No Judgments to be hereafter docketted under the provisions of 4 & 5 W. & M. c. 20.*—Whereas it is desirable that further protection should be afforded to purchasers against judgments, crown debts, and lis pendens: Be it therefore enacted by the Queen's most excellent majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that no judgment shall hereafter be docketted under the provisions of an act passed in the fourth and fifth years of the reign of their late Majesties King William and Queen Mary, intituled "An act for the better discovery of judgments in the Courts of King's Bench, Common Pleas, and Exchequer, at Westminster, but that all such dockets shall be finally closed immediately after the passing of this act, without prejudice to the operation of any judgment already docketted and entered under the said recited act, except so far as any such judgment may be affected by the provisions herein-after contained.

2. *As to judgments already docketted.* 1 Vict. c. 110. —And be it enacted, that no judgment already docketted and entered under the said recited act of their late Majesties King William and Queen Mary shall, after the first day of August one thousand eight hundred and forty-one affect any lands, tenements, or hereditaments, as to purchasers, mortgagees, or creditors, unless and until such memorandum or minute thereof as is prescribed in an act passed in the first and second years of her

present Majesty Queen Victoria, intituled "An act for abolishing Arrest on Mesne Process and Civil Actions, except in certain cases; for extending the remedies of creditors against the property of debtors; and for amending the laws for the relief of insolvent debtors in England," shall be left with the senior master of the Court of Common Pleas at Westminster, who shall forthwith enter the same in manner thereby directed in regard to judgments; and such officer shall be entitled for any such entry to the sum of five shillings.

3. *The date when the memorandum of judgment is left to be entered in a book.*—And be it enacted, that in addition to the entry by the said last mentioned act or by this act required to be made in a book by the senior master, of the particulars to be contained in every memorandum or minute left with him of any judgment, decree or order, rule or order, he shall insert in such book the year and the day of the month when every such memorandum or minute is so left with him.

4. *Judgments after five years from entry, to be void, unless a fresh memorandum is left.*—And be it enacted, that all judgments of any of the superior courts, decrees or orders in any court of equity, rules of a court of common law, and orders in bankruptcy or lunacy, which since the passing of the said recited act of the first and second years of the reign of her present Majesty have been registered under the provisions therein contained, or which shall hereafter be so registered, shall, after the expiration of five years from the date of the entry thereof be null and void against lands, tenements, and other hereditaments, as to purchasers, mortgagees, or creditors, unless a like memorandum or minute as was required in the first instance is again left with the senior master of the said court of Common Pleas within five years before the execution of the conveyance, settlement, mortgage, lease, or other deed or instrument vesting or transferring the legal or equitable right, title, estate, or interest in or to any such purchaser or mortgagee for valuable consideration, or as to creditors, within five years before the right of such creditors accrued, and so, *toties quoties*, at the expiration of every succeeding five years; and the senior master shall forthwith re-enter the same in like manner as the same was originally entered; and such officer shall be entitled for any such re-entry to the sum of one shilling.

5. *Judgments duly registered not to affect purchasers or mortgagees more extensively than judgments of Superior Courts would hitherto have done.*—Provided also, and be it enacted, that as against purchasers and mortgagees without notice of any such judgment, decrees or orders, rules or orders as aforesaid, none of such judgments, decrees or orders, rules or orders, shall bind or affect any lands, tenements, or hereditaments, or any interest therein, further or otherwise or more extensively in any respect, although duly registered, than a judgment of one of the Superior Courts aforesaid would have bound such purchaser or



mortgagee before the said act of the first and second years of the reign of her present Majesty, where it had been duly docketted according to the law then in force.

6. *Not to revive judgments already extinguished or barred.*—Provided also, and be it enacted, that nothing in the said recited act of her present Majesty nor in this act contained shall extend to revive or restore any judgment which shall be extinguished or barred, nor shall the same extend to affect or prejudice any judgment as between the parties thereto, or their representatives, or those deriving as volunteers under them.

7. *Purchasers not to be affected by any lis pendens, unless such suit is duly registered as directed by this act.*—And be it enacted, that no *lis pendens* shall bind a purchaser or mortgagee without express notice thereof, unless and until a memorandum or minute, containing the name and the usual or last known place of abode, and the title, trade, or profession, of the person whose estate is intended to be affected thereby, and the Court of Equity, and the title of the cause or information, and the day when the bill or information was filed, shall be left with the senior master of the said Court of Common Pleas, who shall forthwith enter the same particulars in a book as aforesaid, in alphabetical order, by the name of the person whose estate is intended to be affected by such *lis pendens*; and such officer shall be entitled for any such entry to the sum of two shillings and sixpence; and the provisions herein-before contained in regard to the re-entering of judgments every five years, and the fee payable thereon shall extend to every case of *lis pendens* which shall be registered under the provisions of this act.

8. *Recognizances entered into not to affect purchasers, unless duly registered as directed by this act.* 33 Hen. 8. c. 39. 13 Eliz. c. 4. *Registry to be open to inspection.*—And be it enacted, that no judgment, statute, or recognizance which shall hereafter be obtained or entered into in the name or upon the proper account of her Majesty, her heirs or successors, or inquisition by which any debt shall be found due to her Majesty, her heirs or successors, or obligation or speciality which shall hereafter be made to her Majesty, her heirs or successors, in the manner directed by an act passed in the thirty-third year of the reign of his late Majesty King Henry the Eighth, intituled "The Erection of the Court of Surveyors of the King's Lands, and the Names of the officers there, and their Authority," or any acceptance of office which shall hereafter be accepted by officers whose lands shall thereby become liable for the payment and satisfaction of arrearages under the provisions of the act passed in the thirteenth year of the reign of her late Majesty Queen Elizabeth, intituled "An Act to make the Lands, Tenements, Goods, and Chattels of Tellers, Receivers, et cætera, liable to the Payment of their Debts," shall affect any lands, tenements, or hereditaments, as to purchasers or mortgagees, unless and until a memorandum or minute, contain-

ing the name and the usual or last place of abode, and the title, trade, or profession, of the person whose estate is intended to be affected thereby, and also in the case of any judgment the court and the title of the cause in which such judgment shall have been obtained, and the date of such judgment, and the amount of the debt, damages, and costs thereby recovered, and also in the case of a statute or recognizance the sum for which the same was acknowledged, and before whom the same was acknowledged, and the date of the same, and also in the case of an inquisition the sum thereby found to be due, and the date of the same, and also in the case of an obligation or speciality the sum in which the obligee shall be bound, or for which the obligation or speciality shall be made, and the date of the same, and also in the case of acceptance of office the name of the office and the time of the officer accepting the same, shall be left with the senior master of the said Court of Common Pleas, who shall forthwith enter the same particulars in a book, to be intituled "The Index to Debtors and Accountants to the Crown," in alphabetical order, by the name of the person whose estate is intended to be affected by such judgment, statute, or recognizance, inquisition, obligation, or speciality, or the acceptance of any office; and such officer shall be entitled for any such entry to the sum of two shillings and sixpence; and all persons shall be at liberty to search the same book, and also the other book to be kept according to the provisions of the said recited act of the first and second years of the reign of her present Majesty, or either of the said books, on payment of the sum of one shilling, whether one only or both of the said books shall be searched, and no multiplication of books is to increase the fee.

9. *Quietus to debtors or accountants to the Crown to be registered.*—And be it enacted, that whenever a *quietus* shall be obtained by a debtor or accountant to the Crown, and an office copy thereof shall be left with the senior master of the said Court of Common Pleas, together with a certificate, signed by the Accountant General, that the same may be registered, the said master shall forthwith enter the same in the said book of debtors and accountants to the Crown, in alphabetical order, by the name of the person whose estate is intended to be discharged by such *quietus*, with the date, and shall for any such entry be entitled to a fee of two shillings and sixpence.

10. *For discharge of the estates of debtors or accountants to the Crown in certain cases.*—And whereas it is expedient to make further provision for the discharge of an estate belonging to a debtor or accountant to the crown from the claim of the crown in the hands of a purchaser or mortgagee, although the debt or liability shall not be fully discharged; be it therefore enacted, that it shall be lawful for the commissioners of her Majesty's Treasury of the United Kingdom of Great Britain and Ireland for the time being, or any three of them, by writing under their hands, upon payment of such sums of money

as they may think fit to require into the receipt of her Majesty's Exchequer, to be applied in liquidation of the debt or liability of any debtor or accountant to the Crown, or upon such other terms as they may think proper, to certify that any lands, tenements, or hereditaments of any such crown debtor or accountant shall be held by the purchaser or mortgagee, or intended purchaser or mortgagee thereof, his or their heirs, executors, administrators, and assigns, wholly exonerated and discharged from all further claims of her Majesty, her heirs or successors, for or in respect of any debt, claim, or liability, present or future, of the debtor or accountant to whom such lands, tenements, or hereditaments belonged, or, in cases of leases for fines, to certify that the lessees, their heirs, executors, administrators, and assigns, shall hold so exonerated and discharged, without prejudice to the rights and remedies of the Crown against the reversion of the lands, tenements, or hereditaments comprised in any such leases, and the rents and covenants reserved and contained by and in the same; and thereupon the same lands, tenements, or hereditaments shall respectively be held accordingly wholly exonerated and discharged as aforesaid, but in the cases of leases without prejudice as aforesaid.

11. *Discharge of part of the estate of a debtor or creditor to the Crown not to affect claim of the Crown on other lands liable.*—Provided also, and be it enacted, That any such certificate, or the discharge of any such lands, tenements, or other hereditaments by virtue of this act, shall in nowise impeach, lessen, or affect the right or power of her Majesty, her heirs or successors to levy the whole of any debt or demand which may at any time be due from any such debtor or accountant to the crown out of or from any other lands, tenements, or hereditaments which would have been liable thereto in case no such certificate had been granted and no such discharge had been obtained.

12. *For protection of purchasers against secret acts of bankruptcy.*—And whereas it is expedient that further provision should be made for the protection of purchasers against secret acts of bankruptcy and fiats in bankruptcy; be it therefore enacted, that all conveyances by any bankrupt *bonâ fide* made and executed before the date and issuing of the fiat against such bankrupt shall be valid, notwithstanding any prior act of bankruptcy by him committed, provided the person or persons to whom such bankrupt so conveyed had not at the time of such conveyance notice of any prior act of bankruptcy by him committed.

13. *Purchases from bankrupts not to be impeached unless commission is sued out within twelve months.*—And be it enacted, that no purchase from any bankrupt *bonâ fide* and for valuable consideration, where the purchaser had notice at the time of such purchase of an act of bankruptcy by such bankrupt committed, shall be impeached by reason thereof, unless the commission against such bankrupt shall

have been sued out within twelve calendar months after such act of bankruptcy.

14. *Act not to extend to Ireland.*—And be it enacted, That this act shall not extend to Ireland.

## NEW BILLS IN PARLIAMENT.

### RULES OF PROCEEDINGS IN BOROUGH COURTS.

THIS is a bill, (with the *amendments* made by the Commons,) intituled, "An Act for regulating the Proceedings in the Borough Courts of England and Wales." It recites that great difficulty has been found in framing legal and convenient rules for regulating the Practice of Borough Courts under the authority given for that purpose by an act passed in the session holden in the fifth and sixth years of the reign of his late Majesty King William the Fourth, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales," and by an act passed in the session holden in the sixth and seventh years of the same reign, intituled "An Act for the better Administration of Justice in certain Boroughs; and it is expedient that the power to make rules for regulating the proceedings of such Courts, subject to the approbation and confirmation of the Judges of the Superior Courts of Common Law at Westminster, should be explained and in some respects enlarged: it is therefore proposed to be enacted,

1. That in every borough in which by charter or custom there is or ought to be holden a Court of Record for the trial of civil actions, every judge of such Court shall have authority to make, alter, and revoke such rules for appointing the times of holding such Court, for regulating the forms and manner of proceeding, the process, appearance, practice, and pleadings in such Court, and for settling the reasonable fees of the attorneys and officers of the Court for business transacted therein, as shall from time to time seem to him necessary and proper for expediting the business of such Court with most convenience, and at the smallest reasonable expence: Provided always, that no such rules, or any order revoking or altering such rules, shall be of any force until they shall have been allowed and confirmed by three of the judges of the Superior Courts of Common Law at Westminster.

2. That every such Court shall be holden for the trial of issues of fact and of law four times at least in each year, and with no greater interval between the holding of any two successive Courts than fourteen weeks.

3. That from and after the day of all personal actions brought in the borough courts of England and Wales shall be commenced by writ of summons.

4. That it shall be lawful for the parties in any action after issue joined in any of the said Borough Courts, by consent and by order of the Court, to state the facts of the case in the form of a special case for the opinion of the Court, and to agree that a judgment shall be

entered for the plaintiff or defendant by confession or of *Noli prosequi* immediately after the decision of the case, or otherwise as the Court may think fit, and judgment shall be entered accordingly.

5. That no action commenced in any inferior Court of Record, in which a barrister of not less than seven years standing shall act as judge, assessor, or assistant in the trial of causes, wherein the debt or damages shall not exceed fifty pounds, shall be removed by any defendant before judgment therein into any Superior Court, except in pursuance of such judge's order as hereinafter mentioned, unless such defendant shall enter into the like recognizance, with two sufficient sureties, for payment of the debt or damages and costs, in case judgment shall pass against him, as is now required by law in the case of the removal of causes where the cause of action does not amount to twenty pounds; and if any action which shall have been removed out of any such inferior Court on such security having been given shall come back to such inferior Court by procedendo, such security shall also remain and be a security for the payment of the debt or damages and costs ultimately recovered against such defendant in the said inferior Court, and of all the costs incurred in such Superior Court: Provided always, that any judge of any of the Superior Courts at Westminster may order a writ of certiorari to issue to remove any such cause into any Superior Court without such recognizance or security as aforesaid, on being satisfied by the party applying for the same that such cause ought to be removed without such recognizance or security being given.

[The fourth and fifth clauses of this bill are entirely new.]

#### USURY ON BILLS OF EXCHANGE.

This is a bill "to make perpetual an act of the first year of her present Majesty, for exempting certain bills of exchange and promissory notes from the operation of the laws relating to usury."

Whereas by an act passed in the first year of the reign of her present Majesty (cap. 80), intitled, "An act to exempt certain bills of exchange and promissory notes from the operation of the laws relating to usury," it was enacted, that bills of exchange payable at or within twelve months, should not be liable, for a limited time, to the laws for the prevention of usury:

And whereas the duration of the said act was limited to the first day of January one thousand eight hundred and forty; and it is expedient that the provisions thereof should be made perpetual;

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that the said recited act shall be and the same is thereby made perpetual.

#### FIRST REPORT OF THE SELECT COMMITTEE ON THE CASE OF STOCKDALE v. HANSARD.

THE Select Committee appointed to inquire into the proceedings in the action of *Stockdale v. Hansard*, and who were empowered to report their opinion thereupon from time to time to the House, have agreed to the following Report:—

The Attorney General reported to the Committee, at its meeting this day, that notice had been given of executing a writ of inquiry of damages in the cause of *Stockdale v. Hansard* to-morrow, and requested the Committee to consider of the propriety of counsel appearing on behalf of the defendant upon the assessment of damages: Whereupon it appeared to the Committee, that, while it is under consideration what course it will be proper for the House to pursue in regard to the judgment pronounced by the Court of Queen's Bench, it is not expedient that the defendant should appear by counsel.

10th June, 1839.

#### THE COPYHOLD ENFRANCHISEMENT BILL.

THE Copyhold Enfranchisement Bill has been reprinted, and the compulsory clauses, 38 to 46, in the former bill, (which see 17 L. O. 353) have been struck out, and enfranchisements may now be made by its remaining provisions under the direction of the Tithe Commissioners, where the lord and two thirds of the tenants consent, or independently of the Tithe Commission, by any number of tenants with the consent of the lord. The bill as it now stands, (although in our opinion, frequently expressed, and in that of many others, not go far enough) will be a very useful one. Under it great facilities will be given to enfranchisement. It is true, that unless a very large number of tenants in any manor are willing to enfranchise, the general enfranchisement of whole manors will go on but slowly—just as under the similar stage of the Tithe Act, where two-thirds of the parishioners bound the rest, unless a much larger were willing to commute, considering the absentees and incapacitated persons, no commutation took place. Still where there is a great desire to enfranchise, it may, under the Bill, be accomplished with great ease and advantage. The preliminary agreement, the necessary powers of attorney, and the final award, will be all free from stamp duty; no deed of enfranchisement will be necessary, but the award will shew what each tenant has to pay, and with what part of the enfran-

chisement consideration each tenement is charged. Then, also, all difficulty as to the title of the lord is removed by the clause which declares that the enfranchised land shall not be subject to any incumbrances affecting his title. All these facilities will encourage the enfranchisement of whole manors; but we also think that the other mode of enfranchisement will also go on even with greater readiness. When twelve tenants agree with the lord to enfranchise, they may enjoy many of the foregoing advantages, more especially the award or schedule of apportionment, which we consider one of the most advantageous features of the Bill. On the whole, we are well satisfied to take the Bill as it now stands as an instalment. It passed through Committee on Wednesday last, and there is now every prospect of its becoming the law of the land in the present Session.

#### NOTICES OF NEW BOOKS.

*A Letter to the Right Honourable Sir Edward Knatchbull, Bart., relating to the Bill before Parliament for the Enfranchisement of Lands of Copyhold Tenure, and other Lands subject to Manorial Rights.* 1839.

THIS pamphlet is directed against the Copyhold Enfranchisement Bill; and as we are always willing that both sides should have a fair hearing in these pages, we shall briefly notice its contents. We certainly could have wished, however, that the writer had been more candid in his statements, as we think we shall shew that he has treated the arguments for the Bill unfairly. Thus he says that the compulsory clauses in the Bill are "not only not in consonance with the opinion of the Commissioners in their Report on the Law of Real Property, but distinctly in opposition to their recommendations" (p. 2), and he repeats this in a subsequent part of the pamphlet, in which he quotes all the parts of the Report against the compulsory enactments; but why did he omit to state that the Commissioners throughout their Report bear the strongest testimony to the evils of copyhold tenure, and that they express the greatest desire for its abolition, which they did not recommend, because they could not find a tribunal for adjusting the rights of the parties? Why did the writer not quote such parts of the Report as the following: "To the enfranchisement of copyholds and the abolition of military tenures, may, we conceive, be ascribed some portion of the agricul-

tural improvement and increase of public wealth which have since taken place, and we consider it a matter of the greatest importance that all lay fees should be held by free and common socage" (pp. 7 & 8). Besides, the author should have remembered that two of the Real Property Commissioners (the Attorney General and Mr. Duckworth) were members of the Select Committee, on the Report of which the Bill is founded, and that the other members of the Real Property Commission, as it is believed, concur in the Bill. But of these and other eminent lawyers who gave evidence before the Commissioners as to the propriety of the introduction of the compulsory principle in the Bill, he thus disposes: "I cannot," he says, "at once admit that lawyers of the highest distinction, and conveyancers of the greatest legal attainment, are in truth the most competent judges" (p. 4); and he prefers the testimony of stewards. Now, we believe, that he is here reckoning without his host. We understand that, with some few exceptions, the stewards of manors are in favour of the Bill. The writer next argues that copyholds are not prejudicial to agriculture, and admits that "if the present system operates to the detriment of agriculture, the alteration may probably be justified on public grounds" (p. 6). But what does he say to the checks given to building, and the growth of timber? These points he leaves entirely untouched.

We shall conclude this notice with the following extract as to the effect which the Bill may have on the smaller copyholders:

"The smaller copyholders will begin gradually to sell their little enfranchised bargains. The large proprietors will purchase, and the farms will increase in size. Thus, the race of small and independent yeomanry will be diminished, and the influence of the aristocracy increased in proportion. If such be the object of the framers of the bill, why then indeed, it must be considered to be a wise measure. But no one would dream of ascribing such a wish to those who are the advocates of reform. We can only marvel at the short-sightedness of their policy. The fifty-pound leaseholders will be multiplied, and the smaller copyholders, the real independent voters for counties, will gradually disappear; the distinction between rich and poor will be still more distinctly marked, and the mutual dependence of all ranks on each other will so far become less and less. Another argument has been advanced in favor of the present bill, and which arises from the benefit which is likely to be gained from an uniformity of tenure throughout the kingdom. I cannot myself see how this will be productive of such vast advantage, even supposing such a measure to be in truth

practicable; for local circumstances produce local regulations, to which people become attached by habit; and with respect to customary tenures, every one at all conversant with these matters, can bear testimony to the tenacity with which the tenants adhere to their local customs—so much so, that they are jealous of taking advantage even of those assistances which the liberal construction of a Court of Equity have of late years afforded them." p. 20.

### COURT OF EXCHEQUER GENERAL ORDERS IN EQUITY.

11th June, 1839.

THE Court doth hereby order and direct in manner following—that is to say,

1. That in all cases in which it shall be alleged that the plaintiff is prosecuting the defendant in this Court and also in some other Court for the same matter, the defendant in eight days after filing his answer, or further answer to the plaintiff's bill, shall be entitled, as of course, on motion, to the usual Order for the plaintiff to make his election in which Court he will proceed, with the usual directions in that behalf, unless the plaintiff shall, before the expiration of the same eight days, have filed exceptions to the defendant's answer, or taken to his further answer the former exceptions. And in case such exceptions shall be overruled on argument, or otherwise, the defendant shall then be entitled, as of course, on motion or petition, to the usual Order for the plaintiff to elect in which Court he will proceed, with the usual directions. But in either of such cases the plaintiff shall be at liberty to move that such Order may be discharged on the merits confessed in the answer.

2. That every order obtained as of course to amend a bill shall contain an undertaking by the plaintiff to amend the bill within three weeks from the time of the Order being obtained, and in default of the plaintiff amending his bill within that period, the order shall stand discharged without further motion unless the Court shall in the mean time on special motion make order to the contrary.

3. That after a replication has been filed the plaintiff shall not be permitted to withdraw it and amend the bill without special motion, supported by affidavit, stating the substance of the proposed amendment and that the same is material, and accounting satisfactorily for such matter not having been introduced sooner into the bill.

4. That writs of attachment against parties on the record for non-payment of costs, or for non payment of money ordered or decreed to be paid into Court, or to

any party on the record, shall be issued by the clerks in Court without order, upon affidavit being filed of due service of the subpoena for costs, decree, or order, and on the default being verified by affidavit, or in case of the money being ordered to be paid into Court by the Accountant General's certificate of the money not having been paid.

5. That in all cases in which it shall appear that certain preliminary accounts and inquiries must be taken and made before the rights and interests of the parties to the cause can be ascertained, or the questions therein arising can be determined, the plaintiff shall be at liberty, at any time after the defendants shall have appeared to the bill, to move the Court on notice that such inquiries and accounts shall be made and taken, and that an order referring it to the Master to make such inquiries, and take such accounts, shall thereupon be made, without prejudice to any question in the cause, if it shall appear to the Court that the same will be beneficial to such (if any) parties to the cause as may not be competent to consent thereto, and that the same is consented to by such (if any) of the defendants as, being competent to consent, have not put in their answer to the bill, and that the same is consented to by, or is proper to be made upon, the statements contained in the answers of, such (if any) of the defendants as have answered the bill.

6. That all writs may be tested on the day on which the same are issued, and may be made returnable immediately, as well out of term as in term, but no bill shall be taken *pro confesso* against a defendant unless there be ten days between the teste of each writ, if the defendant reside in town, or within 20 miles thereof, and 15 days in all other cases.

7. That foreclosure causes, as well as other causes, when ready for hearing, may be advanced for hearing, and may be set down to be heard on days appointed for hearing short causes, on a certificate being produced, signed by the plaintiff's counsel, that the cause is a short cause.

8. That every subpoena shall contain three names, where necessary or required, and that a gross sum of 5s. 10d. shall be the amount allowed in costs for every subpoena as heretofore; in addition to which sum the solicitor suing out the writ shall be allowed one fee of 6s. 8d. for the precipe and attendance on subpoenas as heretofore; where the number of names included therein shall not exceed nine: and if they shall exceed nine in number, then an additional fee of 6s. 8d.; and if they exceed eighteen, a further fee

of 6s. 8d.; and so on in proportion for every additional number of nine names included in such subpoenas.

9. That all orders to refer an answer or other pleading or matter depending before the Court for scandal or impertinence, shall contain a direction for the Master to expunge any such scandalous or impertinent matter as he shall find therein, and which shall have been the subject of the reference, and the Master shall be at liberty without further order to tax the costs of such reference and consequent thereon, and the same shall be paid by the party against whom the said order of reference shall have been obtained, if the said answer or other pleading or matter shall be certified to be impertinent—or by the party obtaining the said order of reference, if the said answer or other pleading or matter shall be certified not to be impertinent—and the scandalous or impertinent matter shall not be expunged nor costs taxed until the expiration of four days from the filing of the Master's certificate of such scandal or impertinence, in order that the adverse party may have an opportunity of filing exceptions to such certificate, which exceptions he shall be at liberty to file without obtaining an order for liberty to file the same.

ABINGER. J. GURNEY.  
(Signed) J. PARKE. W. H. MAULE.  
E. H. ALDERSON.

[The further Orders, with Forms of Writs, will be given next week.]

## SUPERIOR COURTS.

### Lord Chancellor's Court.

#### PRACTICE.—ALLOWANCE OUT OF A TRUST FUND TO ESTABLISH TITLE.

*The practice of granting payments out of trust funds to parties claiming title thereto, to enable them to establish their titles, is not to be encouraged.*

One Sarah Hyatt, having died intestate, and without any known next of kin, Mr. Maule, the Solicitor of the Treasury, administered in the usual manner for the Crown, and realised a sum of above 5800*l.* Two persons named Collins and Harrison, together with the plaintiff, laid claim to this money as next of kin of the intestate, and the plaintiffs having filed a bill, a reference was directed to the master to inquire into the validity of their claims. The master reported that Collins and Harrison were the next of kin, and negatived the claim of the plaintiff. An exception was taken to the report; and the *Vice Chancellor* being in favour of the exception, directed an issue; and in order to bring that issue to a satisfactory trial, his Honor, with the consent of Mr. Maule,

directed a sum of 250*l.* to be paid to each of the claimants, and a sum of 300*l.* to be paid to the solicitor of Mr. Maule, out of the principal money in the hands of Mr. Maule as administrator. At the trial the jury found against the claim of Collins and Harrison. A petition was then presented by the plaintiffs, stating that they had expended their 250*l.* in defending their rights against Collins and Harrison, and praying that a further sum of 500*l.* might be handed over to them out of the fund, and a sum of 250*l.* to Mr. Maule's solicitor, in order that they might be placed in a condition to prosecute their claim. The *Vice Chancellor* granted the application, although it was opposed by Mr. Maule.

The *Solicitor General* and Mr. *Wray*, for Mr. Maule, in support of an appeal from his Honor's order, said, that as administrator and trustee for the next of kin, if any, he, the administrator, was bound to object to these repeated diminutions of the funds in his hands by persons who merely asserted that they had a claim, without producing any satisfactory evidence in support of it. They were ready to admit that there were several cases of similar applications being granted by the consent of the administrator, and one, *Cokerell v. Barber*, without consent. The question was, however, whether the Court would go on to sanction those repeated drawings on a fund which the administrator was bound to protect until the heir at law or next of kin was discovered.

Mr. *Wigram* and Mr. *Teed* on the other side, contended that the plaintiffs, by sustaining their exception to the title of Collins and Harrison, had, in a great measure, made out a *prima facie* case in favour of themselves. The case of *Monkton v. The Attorney General* was an authority for what they asked.

The *Lord Chancellor* observed that in *Monkton v. The Attorney General*, there was consent, which made a great difference. His Lordship thought that the granting of money out of estates in the hands of the crown, under similar circumstances had been carried too far, and such also was the opinion his lordship had reason to know of some of his predecessors in office. It was in effect an encouragement of idle litigation. Any person who filed a bill and laid claim to property might come the next day and say, "Now give me a sum of money to pursue my claim." If a claim was not desperate, there was never wanting a sufficient number of solicitors to prosecute it, if it held out a prospect of success. In the present case there was no evidence that the plaintiffs had a good claim. On the contrary, the Master had in so many words negatived the claim they put forth in the inquiry before him. They could not, therefore, be permitted to proceed further at the expence of an estate, which might turn out to belong to somebody else, and which the administrator was, therefore, bound to protect for that rightful claimant. The order of the Court below was discharged.

*Pye v. Maule*, (solicitor to the Treasury), at Westminster, May 24th, 1839.

## Vice Chancellor's Court.

## LIABILITY OF EXECUTORS.

*J. W. F. and two others were appointed executors and trustees of a will. J. W. F. did not prove the will; the other executors did prove, and one took on himself the whole management, and put the estate of his testator into an agency house, of which J. W. F. was a partner. J. W. F. retired from that partnership, and afterwards acted in execution of the trusts of the will, in applying funds transmitted to him by one of the executors who proved. The agency house failed, and the acting executor kept out of the jurisdiction. Upon a bill to make J. W. F. liable to the legacies in the will: Held, that he was not liable, nor his estate.*

Major Thomas Lowry died in India in 1819, having by his will given, besides smaller legacies, a sum of 2000*l.* to his mother for her life, with remainder over, and 8000 sicca rupees to a person in Hindostan to be vested as in the will directed. He gave the residue of his personal estate (which when afterwards realized, amounted to 140,600 sicca rupees) to his executors, in trust to be "invested in government or other good securities" for his children, and to be paid to them at the times &c., in the will mentioned. The testator appointed three executors: viz. his brother James Lowry, then and still residing in Ireland, Colonel Casement, then and still residing in India, and James Williamson Fulton, then residing in India. Col. Casement alone proved the will in India, and James Lowry proved it in England; J. W. Fulton did not prove it at all. The bulk of the testator's personal estate was at his death in the house of Mackintosh and Co. in India, in which house Mr. Fulton was then a partner. After testator's death his estate in that house was transferred to the account of Colonel Casement, and interest was allowed on it, and commission charged by the house in all transactions, on remittances, &c. Mr. Fulton withdrew from the partnership with Mackintosh & Co. about the middle of 1820, drawing out about five-sixths of his property in the house. He came to England, and brought with him the youngest daughter of the testator, and placed her with a Mrs. Stewart, in Ireland, with whom the elder daughter had been for some time before; and about 1823 he became a partner in the house of Rickards, Mackintosh & Co., in London, who had been the agents in London of Mackintosh & Co. of Calcutta. Several sums of Money were transmitted from time to time by Colonel Casement, through the latter house to the house of Rickards, Mackintosh & Co. and were received by Mr. Fulton, and applied to the education and maintenance of the testator's children, four altogether; but two sons died, leaving two sisters, the plaintiffs in this cause, surviving. Mr. Fulton died in 1830, leaving his widow his executrix. The House of Mackintosh & Co. in India failed in 1833, and two days before their failure Colonel Casement sent home bills to a large amount, drawn by that house on the house of Rickards,

Mackintosh & Co. in London; but the failure of the former house becoming known at the time the bills arrived, they were protested for non-acceptance. The testator's daughters, Jane and Mary Ellen Lowry, filed this bill in Chancery against the surviving executors and Mrs. Fulton, widow of the deceased executor, for the purpose of making his estate liable for the residue bequeathed to them; Mrs. Fulton appeared and answered the bill; the other defendants did not appear.

Mr. Jacob, Mr. Bethell, and Mr. Coleridge, were for the plaintiffs, and contended that Mr. Fulton, although he did not prove the will, must be considered to have acted in the trust. He was bound to see the residue laid out on good security for the benefit of the testator's surviving children. He was aware of the insolvent circumstances of the house of Mackintosh & Co.; and in retiring from that house he ought to have drawn out the residue of the testator's estate, as he drew out his own property; for this breach of trust his estate was liable to answer the loss caused by his neglect.

Mr. Knight Bruce and Mr. Lloyd were for Mrs. Fulton.—The points of the arguments on both sides, and the material facts not before stated, and also the cases cited, are stated in the following judgment.

The Vice Chancellor, having taken time to consider the case, said—Upon consideration of the will, he was of opinion that the general residue ought to have been invested in government or other securities in England. The expression used in the will was "government or other good securities" generally; but the language used with regard to the legacy to the Hindostanee woman was "in government or other good securities in Calcutta," and she was described of Hindostan, while the children named in the will as the residuary legatees were all said to be in Ireland. It appeared that the testator had dealings with the house of Mackintosh & Co. at Calcutta, who long before, and up to the time of his death, were his money agents and bankers. The accounts current exhibited, showed how his estates were dealt with by them. The account was kept as between the estate of the testator and Colonel Casement, his executor; but in reality it was an account between Mackintosh & Co. and Colonel Casement. The bill stated that different sales of government notes and bank shares were made by the direction of Colonel Casement; but, in one place especially, it stated the sale of the government notes in August 1820 to have been made by the direction of Colonel Casement, and with the knowledge of Mr. Fulton. There was no evidence, however, that this sale, or any of the sales, was effected with Mr. Fulton's knowledge; and if so, he could not be held responsible as executor for the sale, for there could not have been a remittance to England without a sale. The sale was right, but it was the keeping of the produce invested in the hands of Mackintosh and Co. that was wrong. With that, however, Mr. Fulton had nothing to do; for although he was

a partner in the house of Mackintosh & Co., he ceased to be so in May 1820. It appeared he left Calcutta for England in September or November, 1820, and brought with him the plaintiff Mary Ellen, whom, on reaching England, he sent to Mrs. Stewart in Ireland, who had also the plaintiff Jane, then an infant of the age of eight or nine years, under her care. In September 1819 Mr. Fulton took some steps in disposing of his share and interest in the house of Mackintosh & Co.; and it was not disputed that on the 20th of April 1821, if not before, he finally ceased to be a partner. It was proved by one of the plaintiff's witnesses that he ceased to be a partner on the 1st of May 1820, which was several months before the sale of the government notes. Rickards, Mackintosh & Co. of London, were the general agents of Mackintosh & Co., of Calcutta, and Mackintosh & Co. were the agents of Rickards, Mackintosh & Co. in India, though they were not partners in the London house. About the year 1823 Mr. Fulton became a partner in the house of Rickards, Mackintosh & Co., and continued a partner till his death. It seemed when he quitted India, he had a large sum due to him in the hands of the Indian house. Of that sum he shortly drew out about five-sixths, and at the time of the failure of Mackintosh & Co. the balance due according to the evidence was 102,517 sicca rupees. He appeared to have dealt with his former partners as other customers might have done. From 1821 to 1827 Rickards & Co. were indebted to Mackintosh & Co.; but in 1827 they became creditors, and in 1829 they had a demand on Mackintosh & Co. to the amount of 1,059,000 sicca rupees. Notwithstanding this, Mr. Fulton left part of his property in the house of Mackintosh & Co. About January 1828, Colonel Casement, through Mackintosh & Co., remitted 2000*l.* to the house of Rickards & Co., who, according to their instructions, vested it in reduced annuities, in the names of Colonel Casement and Mr. Fulton, to answer the legacy of 2000*l.* given to the testator's mother for life, with remainder to his brother, C. W. Lowry, for life, with remainder to the children of James Lowry and C. W. Lowry. In July 1824, James Lowry and C. W. Lowry, then a lunatic, by James Lowry, his committee, and the four children of the testator, filed a bill in the Court of Chancery in Ireland, against Mr. Fulton, for an account of the assets of the testator. In November 1824, Mr. Fulton put in his answer, in which he denied that he had ever acted as executor of Major Lowry, or that he ever meant to act in that capacity. The schedules in the answer contained the early part of the account up to the 22d of December 1820. Mrs. Stewart, with whom the children resided in Ireland, was the sister of Mrs. Lowry, the testator's mother. She took care of the children till her death, and they were then placed under the care of a Mrs. Spitta. The expenses of their maintenance and education were paid by remittances from Colonel Casement, through Mackintosh & Co.

to Rickards & Co., which were applied by Mr. Fulton and his widow. It was not suggested these sums were not duly applied. In January 1830 Mr. Fulton died, and by his will appointed the defendant, Mrs. Ann Fulton, his widow, his executrix. She proved the will on the 6th of March 1830. In January 1833 Mackintosh & Co. stopped payment. At that time a large portion of the testator's property was in their hands, as the agents of Colonel Casement, and the testator's estate suffered a considerable loss. The bill set forth a variety of minute circumstances, shewing how the rates of exchange and the price of stock affected the loss; and the substantial question in the case was, whether Mr. Fulton's estate was liable for the amount of that loss. It was said Mr. Fulton held himself out to be an executor, and therefore his estate was liable. *Conyngnam v. Conyngnam*<sup>a</sup> was relied on for that proposition. The defendant in that case had actually received the profits of the trust estate, and on that foundation he was directed to account. In *Urch v. Walker*,<sup>b</sup> there was a clear acceptance of the trust, for Blackburn joined with Wood in conveying the trust estate. In *Bourdan v. Moorman*,<sup>c</sup> Kyme, the trustee, not merely knew that the trust stock was sold, but the proceeds of the sale were paid to him and his partner. He therefore was responsible. *French v. Hobson*,<sup>d</sup> had no resemblance to the present case; there all the executors joined in selling the trust stock, and of course all were liable. But what was laid down by Lord Camden at the Privy Council in *Orr v. Newton*,<sup>e</sup> was very important. He held that Newton, who had not proved, but had in some manner acted, was, by the strictest rule not chargeable for the acts of his colleague. The object of the present bill was not to make Fulton's estate liable for what he received, but for what he not only did not receive, but for what he had not the means of receiving. If he never proved the will in England or India, it was not possible for him to recover the estate of the testator in the hands of Mackintosh and Co. While he was a partner, after the testator's death, he was answerable as a debtor jointly with his copartners for a debt due from the partnership to the testator's estate; but as executor he was not answerable for the debt, either while he was a partner, or after he had ceased to be one. No one was bound by law to prove a will. And no case had been cited to shew that an executor not proving, was liable for the default of the executor who did. So long as he did not prove, he was merely liable for what he received. There was a loose general charge in the bill that Mr. Fulton colluded with Colonel Casement, but there was no evidence to support it, nor was there any evidence of concealment. The letter from Mackintosh & Co. stated the plan on which Colonel Casement meant to act

<sup>a</sup> 1 Ves. sen. 522. See the facts, *Belt's Supp.* 221.

<sup>b</sup> 3 Myl. & C. 702.

<sup>d</sup> 9 Ves. 103.

<sup>c</sup> 1 Brown, C. C. 68;

<sup>e</sup> 2 Cox, 274.



with regard to the small legacies of 100*l.* to Mrs. Stewart and Mr. Yourley. The legacy of 2000*l.*, the maintenance and education of the children, and the management of their funds, in the plan, were acted upon. Out of the great number of letters in the admissions, the ten letters that were written by Mr. Fulton were all referable to his character as agent. The expression in his remaining letter of July 1823, written to Mrs. Stewart, was extremely inconclusive. In one sense Mr. Fulton was an executor, and it might refer to that; but if the written declarations that he made were to be relied upon, they must all be taken together. And then the answer in the Irish cause became most material, because it contained a declaration upon oath, at a time when the attention of Mr. Fulton was distinctly called to the circumstances of which he was speaking. Upon the whole evidence of Mr. Fulton's declarations taken together, he had no otherwise represented than that he was an agent of Colonel Casement, and that he did not mean to be taken as an acting executor. In the case made against Mrs. Fulton the plaintiffs were not entitled to any relief. Upon the whole case his Honor was of opinion the bill must be dismissed as against Mrs. Fulton with costs.

*Lowry v. Fulton and others*, at Westminster, April 30th, and May 1st, 3d, and 29th, 1839.

#### Queen's Bench.

[Before the Four Judges.]

#### ANNUITY.—ENROLMENT.

*An annuity was granted in 1835, and all the deeds properly enrolled. In 1837, the grantor and grantee entered into a new agreement, which was indorsed on the old deeds, and by which the annuity was reduced in amount from 180*l.* to 150*l.*, but instead of being redeemable at pleasure, was not to be redeemed within five years. There was no fresh enrolment: Held, that this agreement constituted a new annuity, that it did not fall within the 10th section of the 53 G. 3, c. 141, but within the second section of that statute, and that for want of a fresh enrolment the annuity was void.*

In this case an application had been made under the 53 G. 3, c. 141, s. 2, for a rule to set aside an annuity upon the grounds that the consideration was not fully set out on the face of the deed, and that the memorial had not been properly enrolled. It appeared from the affidavits in support of the rule, that in the year 1835, there had been an annuity granted by the defendant to the plaintiff in consideration of the sum of 12,000*l.*; the securities &c. were properly enrolled. Some time afterwards a new arrangement was entered into between the parties, and in the year 1837, upon the deposit of a policy of insurance on a life, which was delivered as a collateral security, the plaintiff agreed to accept a smaller amount of interest. The annuity in the first instance was 180*l.* a year, and was to be redeemable at any moment, but when the new arrangement was made, the

sum fixed was 150*l.* per annum, but the annuity was not to be redeemable for five years. The new arrangement was not enrolled, nor was there any fresh enrolment of the deeds securing it. The new agreement was indorsed on the old deeds.

Mr. Erle shewed cause against the rule. The consideration for this annuity was properly set out in the first instance. The alteration in the terms does not constitute a new grant of an annuity, and therefore the terms of this arrangement need not be enrolled. All that was done was merely to reduce the amount of interest. It is doubtful whether the deposit of the policy need be stated, even had that deposit taken place when the annuity was originally granted. *Morris v. Jones*<sup>a</sup> much resembles the present case. There a policy of insurance was deposited, and it was held that that circumstance need not be mentioned, and that the sum of money in respect of which the annuity was granted, was alone necessary to be stated on the face of the deeds or enrolled on the memorial, for that that money was the real consideration. That case may be considered as laying down the principle that the pecuniary consideration for an annuity need alone be stated. That principle was fully adopted in *Fairolosh v. Gurney*,<sup>b</sup> where it was held that a policy was not part of the consideration for an annuity, but the sum contracted for and the amount secured by the policy were properly stated as the consideration for the annuity. In *Aston v. Gwynanell*,<sup>c</sup> A. by two several deeds granted to B. two annuities charged on certain estates, of which A. was tenant for life, and further secured by warrant of attorney, and an insurance on the life of A. Another annuity by deed was afterwards granted by A. to B. charged upon the same estate, and also upon another estate to which A. was likewise entitled, and effected a further insurance on his life. By this deed, A. also charged the two former annuities upon the last mentioned estate. The three annuities were further secured by insurances, &c. A memorial of the grant of the last annuity was enrolled, but no further or additional memorial was enrolled as to the two first mentioned annuities with regard to the charge of them on the additional estate, and the additional securities for them: nor in the memorial enrolled of this third annuity was any notice taken of the additional securities for the two first annuities. The Court there held that it was not necessary under the Annuity Act to enrol any memorial of the further or collateral securities for the two first annuities. That case applies precisely to the present. So does *Blake v. Atterboll*,<sup>d</sup> where a son-in-law agreed with the father's executors to cancel an unsatisfied marriage settlement for 10,000*l.*, on receiving from them 5000*l.* and an annuity of 125*l.*, and it was held that this new agreement need not be enrolled.

<sup>a</sup> 2 Barn. & Cress. 232.

<sup>b</sup> 2 Moore & S. 822; 9 Bing. 622.

<sup>c</sup> 3 Younge & J. 136.

<sup>d</sup> 2 Barn. & Cress. 875.

That case proceeded on the ground that the annuity granted by the father's executors was not granted on a pecuniary consideration, and so was within the 10th section of the statute.\* But then it is said that this is a case not of further securing an old annuity, but of the grant of a new annuity. That argument is not supported by the fact. The same annuity was continued; but the grantee agreed to reduce it by diminishing the amount of the interest. Now the second section of the statute 53 Geo. 3, c. 141, has the words "whereby any annuity or rent-charge shall after the passing of this act be granted." These words clearly refer to an original grant, which this is not. The present annuity is, therefore, properly secured according to that section, or, if not so, it is protected by the provisions of the 10th section, and the rule for setting aside the annuity must consequently be discharged.

Mr. *Kelly* in support of the rule.—On the facts of this case, which are not disputed, can it be said that the second annuity has been properly enrolled? In the first place, is not the bargain which now subsists between these parties, and on which alone the defendant is liable, a second instrument of annuity? In the first place the amount of the sum payable as the annuity is changed. It may be said, that as that change is one made in favour of the grantor of the annuity, and as the statute was intended for the protection of grantors, this alteration in the sum does not require to be enrolled. It is submitted that that argument is unavailable, for that it is not left to the parties to decide whether the change is or is not for the benefit of the grantor; but if there is a change, there must be a new enrolment. But, in the second place, if the matter of benefit is to decide the question, then it is clear that the change of the terms on the subject of the redemption of the annuity, is altogether in favour of the grantee; so that upon the argument of the grantee there ought to be a new enrolment on that account. If it should be held that this new and different contract does not require to be enrolled, the object of the statute will be defeated. [Mr. Justice *Littledale*.—Was there a fresh consideration for the second annuity, or merely an alteration of the sum and of the time? Merely an alteration of the sum and of the time; but that alteration constitutes, in fact and in law, the grant of a fresh annuity. If the plaintiff now sought to enter up judgment, what would be the annuity for which he would do it? Would it be on the annuity of 180l., of which a memorial exists in the public office, or rather would it not be on the annuity of 150l granted in 1837, of which no such memorial exists? [Mr. Justice *Patteson*.—Then in fact you contend that the other annuity was given up, and that the giving of it up formed part of the consideration for the fresh annuity.] That is

the argument which is now submitted to the Court. It is consequently a consideration of money or money's worth, and so does not fall within the 10th section of the statute. [Mr. *Erle*.—The annuity remains the same. The provision called a grant of a fresh annuity is a mere covenant to receive 150l. instead of 180l., and to change the period within which the annuity may be redeemed.] That covenant amounts to a fresh grant of an annuity. The amount of the annuity is different, and the consideration on which it is granted is different. In no sense of the word could the plaintiff enter up judgment on the annuity of 1835. The grant of 1835 was put an end to by that of 1837, and there is no memorial of the latter grant. Both are therefore gone. [Mr. Justice *Patteson*.—*Hammond v. Foster*<sup>d</sup> is most like this case. There the deeds of a regularly granted and enrolled annuity were delivered up uncanceled to the grantor, and he and the grantee agreed that if at any future time the grantor should wish to borrow money on the same terms, these deeds should be given as a security. The attorney afterwards advanced the same money on having the same deeds delivered to him, but this was considered as a regrant of the annuity, and not being registered, the annuity was set aside, and the deeds cancelled.] That case does in substance exactly resemble the present; for though the deeds were not in form delivered up, the parties by a fresh agreement as to terms created a new annuity.

Lord *Denman*, C. J.—I have no doubt whatever on this case. It is perfectly clear that unless the grantee of an annuity is held bound to set out all the consideration for the annuity, there would be an easy method of repealing the statute. The party borrowing would then be entirely at the mercy of the other. If one day he is to grant one annuity, and on another day he is to grant another, and quite a different annuity, I think he must shew on the face of the memorial the nature of the change which has taken place in the agreement between these parties. Nothing of that sort has been done here, and the real nature of the transaction has not been registered. There might perhaps be some doubt whether a mere alteration, clearly in favor of the grantor, might require to be enrolled; but without pretending to decide that point, it is clear that that distinction cannot prevail here. The second instrument here purports to be an operative instrument, and is founded upon a consideration different from that on which the annuity was first granted. It has therefore become a real bargain, which must be enrolled before this Court can allow it to be acted upon.

Mr. Justice *Littledale*.—I think that this is not a case within the 10th section of the statute. I think that this agreement requires to be memorialised as an original transaction, in order that we may know what the existing contract between the parties really is. I am clearly of opinion that this annuity is not protected by the 10th section of the statute.

\* By which it is enacted that the stat. 53 G. 3, c. 141, "shall not apply to any annuity or rent charge granted without regard to pecuniary consideration or money's worth."

Mr. Justice *Patteson*.—This is a question whether the last of these contracts is not to be set aside, as being in fact a new contract. I think that it is a new contract; and that not being properly inrolled, it must be set aside. I think that it is not protected by the 10th section of the statute. The annuity ought to have been registered in the form in which in point of fact it was intended to exist at the time the parties entered into the agreement.

Mr. Justice *Williams* concurred.

Rule absolute.—*Earle v. Brown*, T. T. 1839. Q. B. F. J.

### Queen's Bench Practice Court.

#### JUDGMENT AGAINST THE CASUAL EJECTOR.—SERVICE IN EJECTMENT.—TRUSTEE.

*In an ejectment for the recovery of a dissenting chapel, a service on a trustee, and sticking up a copy on the premises, is sufficient to obtain judgment against the casual ejector.*

In this case, which was an action of ejectment brought to recover possession of a dissenting meeting-house, the service of the declaration was on the trustees of the meeting-house. The question was, whether this was sufficient to authorize the signing of judgment against the casual ejector.

*Butt* applied for a rule to that effect, founding his motion on an affidavit to that effect.

*Coleridge, J.* granted a rule *nisi*, the service of the rule to be effected in the same way as that of the declaration, and a copy of it to be affixed to the chapel.

*Butt* subsequently moved to make absolute the rule *nisi*, on producing an affidavit that the service of the rule had been effected on the trustees, and that a copy of it had been affixed on the chapel.

*Coleridge, J.*, granted the rule absolute.

Rule absolute.—*Doe dem. Grindley v. Roe*, T. T. 1839. Q. B. P. C.

#### FORMA PAUPERIS.—PROCEIN AMY.—COSTS.

*A pauper admitted to sue in forma pauperis may sue by his next amy, the requisites of the statute being complied with.*

*Tyndale* moved for a rule that the plaintiff might be allowed to sue in *forma pauperis*, and also in the name of his next friend, upon the affidavit and petition of the plaintiff, and the opinion of counsel, subscribed as required in such cases.

*Coleridge, J.*—Is not this an application to be made at chambers, in the usual way?

*Tyndale* said that an application had been made to the Lord Chief Justice at his chambers, and that he directed it should be moved in Court.

*Coleridge, J.*—What then are the difficulties arising in this case?

*Tyndale*.—It may be one objection that he moves to sue in *forma pauperis* and by his *prochein amy* at the same time. In ordinary cases the *prochein amy* is liable for costs; but

in this case, as the plaintiff sues in *forma pauperis*, he would not be so liable.

*Coleridge, J.*—Have you all the proceedings right that are necessary for the first part of your application?

*Tyndale*.—My own signature is attached to certify there is a good cause of action; and I have the usual petition and affidavit for the first step in the cause.

*Coleridge, J.*—I do not see why the rule should not be granted.

Rule accordingly.—*Bryant v. Wagner*, T. T. 1839. Q. B. P. C.

### CAUSE LISTS,—Trinity Vacation, 1839.

#### The Court at Error.

From the Common Pleas to the Exchequer Chamber.

#### CAUSES FOR ARGUMENT.

Monday, 24th June, 1839.

*Attorneys.*

Fearnley v. Wright	Messrs. Battye & Co.
& ora. assignees.	Messrs. Hawkins & Co.
Chadwick v. Trower	Mr. Sturmy.
& ora.	Messrs. Alliston & Co.
Young v. Turing.	Messrs. Oliverson & Co.
Bart. & ora.	Mr. Cotterell.

### SITTINGS OF THE COURTS.

*After Trinity Term, 1839.*

#### Before the Lord Chancellor.

AT LINCOLN'S INN.

Saturday June 22	{	First Seal—Appeal Motions and Appeals.
Monday .. 24		
Tuesday .. 25		
Wednesday .. 26		
Thursday .. 27		
Friday .. 28	{	Appeals and Causes.
Saturday .. 29		
Monday July 1		
Tuesday .. 2		
Wednesday .. 3		
Thursday .. 4	{	The Second Seal—Appeal Motions and Ditto.
Friday .. 5		
Saturday .. 6		
Monday .. 8		
Tuesday .. 9		
Wednesday .. 10	{	Appeals and Causes.
Thursday .. 11		
Friday .. 12		
Saturday .. 13		
Monday .. 15		
Tuesday .. 16	{	The Third Seal—Appeal Motions and ditto.
Wednesday .. 17		
Thursday .. 18		
Friday .. 19		
Saturday .. 20		

Monday ..	22	Appeals and Causes.
Tuesday ..	23	
Wednesday ..	24	
Thursday ..	25	
Friday ..	26	
Saturday ..	27	
Monday ..	29	
Tuesday ..	30	
Wednesday ..	31	

Thursday Aug. 1 { The Fourth Seal—Appeal  
Motions and ditto.

Friday .. 2 Petitions

Such days as his Lordship is occupied in the House of Lords excepted.

The Court will not sit after Saturday the 10th August.

### Before the Vice Chancellor.

After Trinity Term, 1839.

AT LINCOLN'S INN.

Saturday .. June 22 The First Seal—Motions.

Monday ..	24	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday ..	25	
Wednesday ..	26	
Thursday ..	27	
Friday ..	28	
Saturday ..	29	
Monday ..	July 1	
Tuesday ..	2	
Wednesday ..	3	
Thursday ..	4	
Friday ..	5	
Saturday ..	6	

Saturday .. 6 The Second Seal—Motions.

Monday ..	8	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday ..	9	
Wednesday ..	10	
Thursday ..	11	
Friday ..	12	
Saturday ..	13	
Monday ..	15	
Tuesday ..	16	
Wednesday ..	17	
Thursday ..	18	
Friday ..	19	
Saturday ..	20	

Saturday .. 20 The Third Seal—Motions.

Monday ..	22	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday ..	23	
Wednesday ..	24	
Thursday ..	25	
Friday ..	26	
Saturday ..	27	
Monday ..	29	
Tuesday ..	30	
Wednesday ..	31	

Thursday Aug. 1 The Fourth Seal, Motions.

Friday .. 2 Petitions.

The Court will not sit after Saturday 10th August.

Short Causes and Unopposed Petitions on Friday the 14th June, and every Friday during the Sittings, previous to the General Paper of Causes, &c.

N.B.—The Vice Chancellor will hear Motions at Lincoln's Inn Hall after the last day of Term until the First Seal.

### Court of Exchequer.

Sittings in Equity in Serjeant's Inn Hall, after Trinity Term, 1839.

Lord Abinger.

Thursday . June 13 { Pleas, Demurrers, & Exceptions, & Further Directions.

Friday ... 14 Petitions and Motions.

Saturday ... 15 { Further Directions and Causes.

Mr. Baron Alderson.

Monday ... 17 { Townsend v. Camperowne, Further Directions, by Order, Causes.

Tuesday ... 18

Wednesday ... 19 { Causes.

Thursday ... 20

Friday ... 21 Petitions and Motions.

Monday ... 24 { Pleas, Demurrers, Exceptions, & Further Directions.

Tuesday ... 25 { Further Directions and Original Causes.

Wednesday ... 26

Thursday ... 27 { Causes.

Friday ... 28 Petitions and Motions.

Monday ... July 1 { Pleas, Demurrers, Exceptions, & Further Directions.

Tuesday ... 2 { Further Directions and Original Causes.

Wednesday ... 3 Causes.

Thursday ... 4 Petitions and Motions.

### Queen's Bench.

LONDON.—SPECIAL JURIES.

No Special Juries will be appointed for trial in London during the Sittings after Trinity Term, 1839, unless by the order of the Lord Chief Justice. Dated June 13th, 1839.

### Exchequer of Pleas.

After Trinity Term, 1839.

MIDDLESEX.

Thursday June 13 { Common Juries.

Friday .. 14

Saturday .. 15 { Revenue and Common Juries (Customs).

Monday .. 17 { Revenue and Common Juries (Excise).

Tuesday .. 18

Wednesday .. 19 { Special & Com. Juries.

Thursday .. 20

Friday .. 21 Common Juries.

Saturday .. 22 Common Juries.

LONDON.

Friday .. June 14 (To adjourn only.)

Monday .. 24 { Adjournment-day.

Tuesday .. 25 { Common Juries.

Wednesday .. 26

Thursday .. 27

Friday .. 28

Saturday .. 29

Monday .. July 1

Tuesday .. 2 Common Juries.

Wednesday .. 3 Common Juries.

The Court will sit at half-past nine o'clock.

The Court will not sit in London on Friday, June 14th, but will be adjourned to Monday, the 24th.

## LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

**House of Lords.**

To enable the Justices at Quarter Sessions to appoint a Clerk of the Peace in certain Cases.

[Negatived.]

To improve the Practice and Proceedings in the Court of Pleas of Durham. [Passed.]

To enable Justices of Assize on their Circuits to take inquisition of all Pleas in the Court of Exchequer of Pleas, without Special Commission.

[Passed.]

Belper,—Hatfield,—Halifax,—Huddersfield, and Bradford Small Debts Court Bills.

**House of Commons.****ADMINISTRATION OF JUSTICE.**

To improve County Courts.

[In Select Committee.] Lord John Russell.

For keeping and authenticating non-parochial Registers of Births, Deaths, and Marriages.

[In Committee.] Lord John Russell

For regulating the Police Courts in the Metropolis. [In Committee.]

For the better ordering of Prisons.

[For 3d reading.] Lord John Russell.

To make perpetual the 1 Vic. c. 80, for exempting certain Bills and Notes from the Usury Laws.

The Chancellor of the Exchequer.

[For 3d reading.]

To regulate and enlarge the Summary Jurisdiction of Justices. Lord John Russell.

[In Committee.]

For further improving the Police in and near the Metropolis. Mr. F. Maule.

[For 2d reading.]

Small Debts Court Bills for the following places:—

Aberford,	Nottingham,
Bury, (Lancashire)	and
Chesterfield,	Mansfield,
Eckington,	Oldham,
Glossop,	Pontefract,
Grantham,	Rochdale,
Kingsbridge and	Rotherham,
Dodbrooke,	Tavistock,
Leeds,	Warrington,
Liskeard,	West Ham,
Liverpool,	Worksworth,
Newark,	Yorkshire.
Newton Abbot,	

To enable the Justices at Quarter Sessions to appoint a Clerk of the Peace in certain Cases. [Passed.] Mr. Pakington.

To abolish Grand Juries. Mr. Pryme.

To amend the Law relating to double and treble Costs, to pleading the General Issue, and as to Notice and Limitation of Actions.

[Passed.] Sir F. Pollock.

To amend the Law relating to the Custody of Infants. [For 3d reading.]

Mr. Serjt. Talfourd.

To amend the Imprisonment for Debt Act, as to Advertisements.

[In Committee.] The Attorney General.

**LAWS OF PROPERTY.**

To amend the Law of Copyright.

[In Committee.] Mr. Serjt. Talfourd.

For the Enfranchisement of Lands of Copyhold and Customary Tenure.

[For 3d reading.] Mr. James Stewart.

For securing the Benefit of Inventions in Arts and Manufactures. Mr. Mackinnon.

To render the Owners of Small Tenements liable to the payment of Rates assessed thereon. Mr. Robert Gordon.

This Bill has been negatived.

For the Bill . . 70

Against it . . 94

**LAW OF ELECTIONS.**

For the registration of Parliamentary Electors.

[In Committee.] Mr. Attorney General.

Controverted Elections. Lord Mahon.

[For 2d reading.]

To amend the jurisdiction for the Trial of Election Petitions. Sir R. Peel.

[For 2d reading.]

For assimilating the qualification of Electors as Voters for Coroners to that of the constituency of members of Parliament, and taking the Poll at Election for Coroners in one day. Sir H. Fleetwood.

For establishing a Court of Appeal from the Revising Barristers. [Mr. C. Buller.]

To prevent persons from losing their votes at an election by removal after the preceding Registration. [In Committee.] Mr. Gibson.

SHERIFFS;—HIGHWAYS;—SEWERS:—

**TURNPIKES.**

To amend the Laws relating to Highways.

[In Committee.] Mr. Barnsby.

To alter and amend the Laws relating to Sewers. In Committee.] Mr. Christopher.

To regulate the expences to be incurred by persons serving the office of High Sheriff in England and Wales. [Passed.]

To provide for making Unions of Turnpike Trusts. [Mr. Mackinnon.]

**Bills Postponed.**

District Sessions. District Prisons.

**THE EDITOR'S LETTER BOX.**

The form of affidavit given in our last number to hold a defendant to bail under the 1 & 2 Vict. c. 110, was deemed sufficient in the case in which it was made. There are of course other forms, suited to other cases. If a correspondent will send the form in his case, we shall see the point, which is not clearly stated in his letter.

The letters of "Box," a "Solicitor," X. P. Y, and "A Student," will receive early attention. The information suggested by A. Z. shall be procured.

Inquiry shall be made as to the permission to give the notices *nunc pro tunc*, stated by a correspondent, who should add the name of the attorney to whom he was attested.

The very able paper of "Publius," on the case of *Stockdale v. Hansard*, is under consideration.

The communication of "A Country Attorney" shall appear next week.

# The Legal Observer.

SATURDAY, JUNE 22, 1839.

— " Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT

## THE PRIVILEGE OF PARLIAMENT.

THE important question involved in the case of *Stockdale v. Hansard* came before Parliament on Monday last, when the subject was discussed with great ability on both sides. We cannot pretend, in the short space allotted to us, to go into this matter at length,—particularly as we have in the present number inserted an able communication respecting it; still it may be useful to state how it now stands.

The case of *Stockdale v. Hansard*, which has been pending for the last two years, was adjudicated upon by the Court of Queen's Bench on the 31st of May last, when the ruling of Lord Denman<sup>a</sup> at Nisi Prius was unanimously confirmed by the full Court. A Select Committee was immediately appointed by the House of Commons, which being apprized that a writ of inquiry had been issued for the assessment of damages, and that under this writ damages to the amount of 100*l.* had been awarded against Messrs. Hansard, and that execution might issue on Tuesday last, the Committee found it necessary to make an immediate Report. After pointing out other courses which might be pursued, the majority of the Committee recommended that the execution of the judgment should be resisted. It is to be observed, however, that while the majority of twelve comprised the names of the Attorney General, Mr. Wynn, Mr. Serjeant Wilde, Dr. Lushington, the Lord Advocate, and the Solicitor General for Ireland; in the minority of seven are to be found those of Sir Robert Peel, Lord John Russell, Sir E. Sug-

den, and the Solicitor General; and it was therefore to be expected that when the Report was considered by the whole House, the recommendation of the Committee was not adopted by the majority (there being however a very large minority) but they resolved that the judgment of the Court of Queen's Bench should not be resisted, and that the further consideration of the question of privilege should be deferred until the Committee had made their complete Report. This course, however, was stoutly contested, more especially by the Attorney General and Mr. Serjeant Wilde, by both of whom the question was handled with the greatest ability. It must be admitted that there are great difficulties in the case, and that the people of England would not, at any rate at present, have agreed to resist the law. At the same time, on the future settlement of the question we trust that the arguments in favour of the privilege will be duly considered. These were stated by Sir Robert Peel, by Lord John Russell, by the Attorney General (who indeed exhausted the subject in his argument before the Queen's Bench) and by others, who, however, were thrown into the shade by Serjeant Wilde,—whose speech, whether for matter or manner, was one of the most striking ever delivered in Parliament. He argued, with great force, that the privilege of publishing Reports and other papers by the House of Commons on the matters before them, or the inquiries directed by them, was necessary for the public good; that Parliament was the great inquest of the nation; that it was its duty to inquire into all grievances and crimes, and to inform the public of the true state of the case; that the conduct of public officers, of judges and others, was constantly brought under the notice of Parlia-

<sup>a</sup> See the case stated 13 L. O. 303, 306.  
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ment, and that it was necessary to investigate into the truth of such charges, and oftentimes to acquaint the public with the result, or otherwise legislation or punishment might proceed in the dark; that when a person was unjustly aggrieved by any such publication, a remedy was open to him by petition; that if the privilege of the House of Commons was to be decided on by the Courts of Law, the judgments of which were subject to the appellate jurisdiction of the House of Lords, the independent privilege of the House of Commons might thus be lost. But he admitted that without a large majority of the House, representing the two great parties in the state, concurred, the course of resistance could not be properly adopted. It follows, therefore, that he agreed in the course actually pursued, although he divided in the minority.

It is to be observed, that Lord Denman in his judgment abandoned the distinction insisted on by some in this case, that the publication for sale by Messrs. Hansard rendered the case much stronger against them. "I would observe," says his Lordship, "that the act of selling does not give the plaintiff any additional ground of action or right to redress at law, beyond the act of publishing. The injury is precisely the same in its nature, whether the publication be for money or not, though it may be much more extensively injurious when scattered over the land for profit."—Printed Case, p. 155.

We shall await the General Report of the Committee with great interest; and now add the communication on the subject to which we have referred.

#### STOCKDALE V. HANSARD.

"The word *Privilege* means no more than immunity, or a safeguard to the party possessing it, and can never be construed into an active right of invading the rights of others."—JUNIUS.

*To the Editor of the Legal Observer.*

Sir,

THE late decision of the Queen's Bench, that a resolution of the House of Commons is not tantamount to an act of parliament—however consonant with common sense, with equity, and the free spirit of our constitution—has, it seems, given offence in certain quarters; a committee to examine precedents, &c. has been appointed, and some idle vapouring indulged in as to summoning the Judges to the Bar of the House of Commons. I am, I own, a little curious to see the precedents which are to be brought forward on this occasion. Should the search be unsuccessful, it need not at all events be a very tedious one, since the custom out of which the present contest has arisen is of an antiquity not exceeding four or five years. As to the summoning the Judges, I hope the

House will recollect in time that "discretion is the better part of valour," and that Hotspur's "will they come when you do call for them," may be as applicable to other people as to Owen Glendower; they may thus escape a committal of themselves before the public, and their messenger a committal into the custody of the warden. Let us in the mean time examine the grounds upon which the House of Commons would impeach their Lordships' judgment. Two only occur to me; the first, their competency to try the case at all: the second, the legality of the decision they have come to.

Now, as to the first objection. Surely the competency of the tribunal was admitted, when the House directed the Attorney General to argue the question upon its merits before the Court; for to what purpose was this done if they were incompetent to pronounce a judgment? Then, was that sentence illegal or oppressive? The Court are the proper judges of its legality:—their unanimous opinions are before the profession. Oppressive, certainly it is not; for who is injured? Not Mr. Hansard: let the House indemnify their servant.—Not the Commons, they have lost no privilege: the Court has but repressed their assumption of that to which they had no legal claim, and declared that, mighty as they are, their authority has boundaries which they must not pass. But this is no novel doctrine: it has long been held that "no resolution of either House of Parliament can make that a legal privilege which was not so before. The law of parliament may be expounded from time to time, but cannot be extended or altered without the authority of the whole legislature."<sup>a</sup> Nor is this unreasonable. Why were these 'privileges' first established? Plainly to protect the members as well from molestation by their fellow-subjects, as also, and indeed principally, from the oppression of the Crown. But how, if they themselves encroach upon our freedom, *quis custodiet custodes ipsos*? Are we without remedy? No—to the Queen's Bench, the Supreme Court of Common Law within the kingdom, the aggrieved subject may of right appeal: there, if the wrong complained of was inflicted by a speech in either House of Parliament, the Court will recollect and will tell the plaintiff that "the freedom and proceedings in parliament ought not to be impeached or questioned in any Court or place out of parliament;" yet if the legislator should have over-stepped his privilege,—as for instance, by the publication of his speech—he then becomes amenable to the common law, and to an action of libel at the suit of any man who is aggrieved by it. 1 M. & S. 273.

But Sir Edward Coke tells us, that "the power and jurisdiction of parliament is so transcendent and absolute that it cannot be confined either for causes or persons;" and Sir John Fortescue says, that "it is so high and mighty in its nature that it may make law, and that which is no law, it may make law." Both these

<sup>a</sup> Dwarris on Statutes, Vol. 1, p. 68, and the authorities there cited.

famous judges, however, here allude to the power of the legislature, not to the prerogatives of either house; and it is absurd to argue that what is true of the whole is equally so of every component part. Again, "these privileges are not only very large, but they are indefinite;" yet it does not therefore follow that they are unbounded: many reasons may make it inexpedient to enumerate and fix all the privileges of members; but there can be none against the repression of any claim set up by either Lords or Commons which should militate against the due authority of the Crown, the independence of the other house, or the rights and liberties of the people. "The law of Parliament (says Mr. Hallam,) as determined by regular custom, is incorporated into our constitution; but not so as to warrant an indefinite uncontrollable assumption of power in any case, least of all in judicial proceedings, where the form and the essence of justice are inseparable from each other:"<sup>b</sup> and in conformity with this doctrine it has been long ago decided that "the Courts will take notice of matters of privilege coming incidentally before them, because it is necessary in order to prevent a failure of justice." Per Lord C. J. De Gray, *Brass Crosby's case*, 19 State Trials, 1150.

How then shall we ascertain, as each successive case arises, whether the "privilege" asserted should be conceded or resisted? Sir Edward Coke informs us that "this customary law is to be sought and found in the Rolls of Parliament, in precedents and records, and continual experience of the custom of parliament;" and Mr. Hatsell, probably the best modern authority on the subject, declares "that the only means of knowing what are the privileges of the House of Commons, is to consult the records of that House, and to search into the history of parliament for those cases in which a claim of privilege has been made, and examine whether it has been admitted or refused." 1 Hats. 2. Now to apply this doctrine: there are numerous recorded cases in which both houses have asserted "privileges," and punished those whom they considered to have infringed them, very often justly,—where the vindication of their insulted dignity demanded the most severe examples;—but in other cases, during factious times, and amid the violence of party strife, atrocious injuries, oppressions which would have disgraced the Star Chamber, have been inflicted under the pretence of "privilege," upon the innocent asserters of their own private or of the public right. These wrongs were frequently, though not invariably redressed, when the political tornado had subsided to a calm. Nay, the wrong-doers have gone farther, they have declared such cases should not be precedents; as for example in Mr. Wilkes's case, where the Commons erased from their journals every trace of proceedings which they at the time deemed necessary assertions of their privileges, but on cooler consideration agreed with the majority of Englishmen, were in truth but lamentable in-

stances of the triumph of party spirit over liberty. None of these cases can, however, be considered precedents against the present plaintiff, who has been injured by the carrying out a resolution of the commons of a very modern date. A report, containing an alleged libel on Mr. Stockdale, is printed by the authority of the House, not for its own members only,—for had its publication been thus restricted, though the plaintiff's injury might have been the same, the privilege of the House undoubtedly would have barred his remedy;—but the House turn booksellers, and circulate extra copies of the report for money; then, like other booksellers, they must be liable to answer for any libel which their publication may contain. The circulation of these extra copies affects not the independence of the House, or the senatorial privileges of its members. If then, their plea of privilege had been allowed to bar the plaintiff's remedy, let us observe the gross injustice which must have resulted from it. Before a Committee, or by the Commissioners of the House, a charge is made against an individual. It is an *ex parte* charge, yet he cannot repel it; it is not made on oath, yet he cannot contradict it. His character, his fortune, his very life may be assailed—possibly without a shadow of justice. Now, shall he turn round on his calumniators, and bring an action against their publisher for libel? If he do this, the House of Commons is in arms against him and the Court which entertains his plea. Shall he through the press endeavour to explain away the charge, and hurl back on his accusers his defiance and the lie? If he takes this course, he risks an information for a libel on the House, filed against him at their instance by the Attorney General: and this state of things is nick-named 'Liberty.' Well might an honourable member<sup>c</sup> tell the House in 1838, that "to refuse redress to any individual whose character might be libelled, and his property ruined by documents put forward by their Committee, might be *parliamentary justice*, but was not common sense; it was neither natural justice, nor the justice which the English Judges had from the first ages of the Constitution dispensed to English subjects:" and that "the demands put forward by that House could only be enforced by a tyranny more monstrous than ever had existed in the country, except in the days of the Long Parliament." Half a century has elapsed since Mr. Stockdale, the father of this very plaintiff, published Logan's pamphlet in defence of Warren Hastings, whose impeachment after a nine years' trial, terminated, as your readers will recollect, in an acquittal. For this publication Mr. Stockdale was prosecuted by the House of Commons, and successfully defended by Mr. Erskine, who took the same line of argument when pleading for the father which Messrs Curwood and Carington have chosen when demanding justice for the son; but with this remarkable excep-

<sup>c</sup> G. F. Young, Esq., the late M. P. for Tynemouth.—*Hansard's Parliamentary Debates*, Vol. 38, p. 1305.

<sup>b</sup> Hist. Middle Ages, Vol. 2, ch. 8.



tion, that whereas Mr. Erskine, in 1789 complained that through the *remissness* of the House of Commons, charges had gone forth against Warren Hastings unaccompanied by his defence or explanation; in 1839, the counsel of the present plaintiff shew that the reports complained of were *deliberately* set forth, and *copies sold for money by order of the House*. "Before the House of Commons, (said Mr. Erskine,) sent the Attorney General to this place, they should have recollected that their want of circumspection in the maintenance of their privileges, and the protection of persons accused before them, had given to the public the charges which should have been confined to their journals: the course and practice of parliament might warrant the printing of them for the use of their own members, but here the publication should have stopped, and all further progress been resisted by authority \* \* \* Had the Commons by the exercise of their high, necessary, and legal privileges, kept the public aloof from all canvass of their proceedings, by an early punishment of printers, who, without reserve or secrecy, sent out charges into the world from a thousand presses in every form of publication, they would then have stood upon ground to-day from whence no argument of policy or justice could have removed them; because nothing can be more incompatible with either than appeals to the many upon subjects of judicature, which by common consent a few are appointed to determine, and which must be determined by facts and principles, which the multitude have neither leisure nor knowledge to investigate. But then let it be remembered that it is for those who have to accuse and punish, to set the example of, and enforce the reserve which is necessary for the ends of justice \* \* \* Shall it be endured that a subject of this country, instead of being arraigned and tried for some single act in her ordinary courts, where the accusation, as soon at least as it is made public, is followed in a few hours by the decision, may be accused by the House of Commons; that the accusation shall spread as wide as the region of letters, and the accused stand day after day, and year after year, as a spectacle before the public, which shall be kept in a perpetual inflammation against him; yet, that he shall not, without the severest penalties, be permitted to submit any thing to the judgment of mankind for his defence? If this be the law, such a man has no trial; that great hall built by our fathers for English justice, is no longer a court but an altar, and an Englishman, instead of being judged in it by God and his country, is a victim to a sacrifice."<sup>d</sup>

With these and such like arguments Erskine defended Stockdale in 1789. I rejoice to find that fifty intervening years have not weakened their authority in our own day. The question having again been raised and solemnly decided by the judges, there are

<sup>d</sup> One or two *very slight* and merely verbal alterations have been made above, where Erskine language was peculiarly applicable to Mr. Hastings.

three courses open to the House of Commons: the first, to let the matter drop, to recompense Mr. Stockdale for the injury he may have sustained, and to be more cautious for the future as to what books they sell. The second, to pass an act of parliament (if they can obtain the Sovereign and the Lords' assent) to make that law which is now usurped authority. The third, to push the matter to extremities, and send their Serjeant at Arms, with his mace and the Speaker's warrant, to Westminster Hall. Which of these courses they will resolve upon a few days must shew.—If the first, they virtually concede the question in debate:—If the second, at least the forms of the constitution will be adhered to; we shall have an opportunity of petitioning against it at every stage; and when it becomes an act of parliament,—but "to such a when, I write a never"—why, we must obey it, until it be repealed, and burnt by the common hangman.—If the third course be taken, our Judges have noble precedents to guide them: Sir John Holt's energetic language may be addressed again, though in more polished phrase, to another Speaker of the House of Commons. Should the Counsel be again (as they have been often heretofore) assailed, they will, I am sure, like Erskine, "at all hazards, assert the dignity, independence, and integrity of the English Bar;"—and for your more immediate readers, for us who hold "the inferior, the ministerial offices, in the temple of justice," and whom the usages of the profession forbid to take a prominent position in the struggle, it may be sufficient for the individual upon whom the honourable lot shall fall, to evince for himself and brethren our firm attachment to the constitution, by his cheerful readiness to suffer in its defence.

Temple, 10th June, 1839.

PUBLIUS.

## THE PROPERTY LAWYER.

### PAROL LICENSE.

A PAROL license is countermandable at any time when it is merely executory, but when it has been executed it cannot be recalled at pleasure. Thus, where there was a license to put a skylight over an area, it was held that it could not be recalled at pleasure after it had been executed by the grantee. *Winter v. Brookwell*, 8 East, 308. So, where the owner of a close had given a party a license to place a cock of hay upon it, until he should be able conveniently to sell it; the close was subsequently leased by the owner to the defendant for a term of years, who put in some cattle, which eat the hay, for which trespass was brought, and it was held by *Montague, C. J.*, and *Houghton, J.*, (*Doddridge, J.*, *dissentiente*) that the plaintiff under such circumstances was entitled to notice. *Webb v. Paternoster*, Palm. 71; *Popham*, 151. But, where a man out of kindness to his neighbour, allows him to pass

over his land, the transferee of that land is not bound to do so likewise. Nor is a person under such circumstances entitled to a notice of the transfer. This rule has lately been held to apply to a license to make a railroad, as to which the following opinions were expressed :

"A person," said Lord Abinger, C. B., "is bound to know who is the owner of the land upon which he does that which, *prima facie*, is a trespass. Even if this were not so, I think the defendants ought, in excuse of their trespass, to have pleaded the fact that they had no notice of the transfer. It is true, it would be the assertion of a negative; but I think this would be one of those cases where, to make a title or excuse good, a negative should be shewn on the pleadings, even if the proof of the affirmative might be on the opposite party. As to the case of *Webb v. Paternoster*, Palm. 71; Popham, 151; 2 Rol. R. 143; the grant of the license to put the hay stack on the premises was in fact a grant of the occupation by the hay stack, and the party might be considered in possession of that part of the land which the haystack occupied, and that might be granted by parol." *Parker, B.*, said, "We are not called upon in this case to consider whether a license to create or make a rail-road, granted by a former owner of the soil, is countermandable after expense has been incurred by the licensee, which was the question in *Winter v. Brockwell*, 8 East. 308; for it is not alleged that there has been any expense incurred in consequence of the license, and therefore it remains executory; and I take it to be clear that a parol executory license is countermandable at any time; and if the owner of land grants to another a license to go over or do any act upon his close, and then conveys away that close, there is an end to the license; for it is an authority only with respect to the soil of the grantor, and if the close ceases to be his soil, the authority is instantly gone. *Webb v. Paternoster* is very distinguishable from this case, for there the license was executed, by putting the stack of hay on the land; the plaintiffs there had a sort of interest against the licensor and his assigns; but a license executory is a simple authority, excusing trespasses on the close of the grantor as long as it is his, and the license is uncountermanded, but ceases the moment the property passes to another." *Gurney, B.*, concurred. *Wallis v. Harrison*, 4 Mee. and Wels. 538.

## NEW BILLS IN PARLIAMENT.

### COURT OF APPEAL FROM REVISING BARRISTERS.

This is "a bill for establishing a Court of Appeal from the Revising Barristers of England and Wales." It recites that it is desirable to establish a Court of Appeal from the decisions of the barristers appointed to revise the list of

voters in England and Wales; and proposes to enact as follows:

1. That the General Committee of Elections, constituted by "an act passed in the present session of parliament, or the majority of them, shall, at the commencement of every session of parliament, by warrant under their hands, appoint three barristers of not less than seven years' standing to be judges of a court of appeal from the revising barristers of England and Wales, naming therein one of them to be Chief Judge of such Court; and every such warrant shall be laid on the table of the House of Commons, and if not disapproved by the House within fourteen days, shall take effect as a valid appointment of such persons to be judges of such court of appeal.

2. That in case the House shall disapprove all or any of such appointments, the said general Committee, or the majority of them, shall in like manner appoint another person or other persons qualified as aforesaid, and so shall do until such appointment be not disapproved by the House as aforesaid; and any such appointment which shall not be disapproved by the House shall take effect as an appointment of the persons so named to the said office of assessor.

3. That in case of any vacancy occurring among such judges of the court of appeal during the session of parliament, the appointment of a judge to supply such vacancy shall in like manner be made by the said general committee or the majority of them, within fourteen days from its occurrence, and submitted to the approval of the House, and in case of disapproval a fresh appointment in like manner made until some such appointment be not disapproved by the house; and that in case any such vacancy shall occur while the house is not sitting, then any such appointment may be made by such general committee, or the majority of them, by warrant under their hands, and shall take effect as a complete appointment of the person so named to the said office of judge of the Court of Appeal.

4. Oath of judge of Court of Appeal.

5. Salaries and expences, (amount not stated.)

6. That the said Court of Appeal shall hear and decide all questions of law which shall be brought by way of appeal from the decisions of the barristers appointed to revise the lists of voters in England upon their circuits; and such appeals shall be by way of special case, which special case shall be signed by the revising barrister from whose decision the appeal shall be brought, upon application made to him for that purpose, by or on behalf of the person whose name shall have been expunged from or not inserted in the list of register of voters by the decision of the revising barrister, or by or on behalf of the overseer or person having objected to such name being inserted in or retained upon the list or register of voters, as the case may be; and the subjects of such appeals shall be questions of law only, and not questions of fact; and such Court of Appeal shall sit somewhere in London or Westminster, and shall be an open Court.

7. That no appeal from the decision of any

revising barrister shall be entertained, unless notice of appeal shall be given to the barrister within *fourteen* days after such decision, and unless the case of the appellant shall be lodged at such place and within such time as the Court of Appeal shall direct in that behalf.

8. That every order or decision of the Court of Appeal, reversing or in anywise altering the decision of the revising barrister, so as to have the effect of making any alteration in the register, shall be forthwith notified by the chief assessor to the clerk of the peace of the county, riding, parts or division of a county, or the returning officer of the city or borough, to the list or register of voters of which such decision shall relate; and the clerk of the peace or returning officer shall forthwith alter such list or register of voters in such manner and form as the chief judge shall by writing subscribed by him direct; provided that no right of voting at any election of a member or members to serve in parliament shall be extended or limited or in any way whatsoever affected by any appeal pending in the said court at the time of such election, but it shall be lawful for every person to exercise the right of voting at such election as effectually, and every vote tendered thereat shall be as good as if no such appeal were pending; and that the subsequent decision of any appeal which shall be pending in the said court at the time of any such election shall not in any way whatsoever alter or affect the poll taken at such election, nor the return made thereat by the returning officer.

9. Copies of decisions of the Court of Appeal, signed by the chief assessor, to be admissible in evidence.

10. That it shall be lawful for the said court of appeal to make such order respecting the payment of the *costs* of any appeal, or of any part of such costs, as to the said court shall seem meet; and that in all cases in which any such order shall be made, the amount of such costs, to be ascertained by the said court, shall be stated in a certificate of such order, which certificate shall be signed by the chief judge and delivered to the party entitled to receive such costs; and a copy of such certificate shall be served upon the party liable to pay such costs, or left at his usual place of abode; and if upon such service, and a demand made, the party so liable shall refuse or neglect to pay the amount stated in such certificate, then and in such case the same may be recovered by action of debt in the Court of Queen's Bench at Westminster, in which the validity of the said certificate, after proof of the chief judge's hand-writing, shall not be called in question.

11. That it shall be lawful for the said court to make *rules*, not inconsistent with the provisions of this act, for the administration of the business of the said court, and of the business of the said circuits; and from time to time to vary, alter and repeal all or any of such rules and to make others in their stead: Provided that all the rules so made, varied and altered, or by which any previously existing rules and regulations shall be repealed, be approved

of by the speaker for the time being, and be laid before the House of Commons within *ten* days after they shall be made, varied, altered or repealed, if the said house shall then be sitting, or if not, then within *ten* days after the said house shall next re-assemble: Provided also, that it shall not be lawful for the said court, by any rule, to exclude the parties to any appeal from being heard by counsel before the said court.

12. That no select committee of the House of Commons appointed under an act passed during the present session, intituled, "An Act to amend the Jurisdiction for the Trial of Election Petitions," shall entertain any question respecting the right of any person to be on the register of electors for any county, city or borough in England and Wales.

#### THE LAW RELATING TO ATTORNEYS PRACTISING IN THE INSOLVENT DEBTORS' COURT.

FROM a useful work, recently published, called "The Town and Country Practice of the Court for the relief of Insolvent Debtors," by Robert Allen, Esq., Barrister at Law, we extract the following summary of the Law relating to the Practitioners in that Court:—

"Every attorney admitted of the court under the former act is effectually admitted under this, provided he still continue an attorney of the Superior Courts, of Westminster, although in the early acts instituting the Court for the Relief of Insolvent Debtors the legislature did not restrict persons practising as attorneys to those who had been duly admitted of the Superior Courts, from an apprehension that the funds of the insolvent might not offer sufficient remuneration to induce attorneys to act for them: experience has shewn that such an apprehension was unfounded, and the late act, therefore, 7 Geo. 4, c. 57, confined the right of appointment to attorneys of the Superior Courts, but no attorney could act on behalf of a prisoner in actual custody (and such only could petition) unless he were duly admitted by this Court; now, however, by section 116, the Court shall and may admit at their discretion any number of *fit* persons, being attorneys of any of the Superior Courts of Westminster, to practise in the said Court as attorneys on behalf of such prisoners in actual custody, which admission shall in all cases be made without the payment of any fee or gratuity whatever, and shall be filed of record in the said Court. This alteration is most essential as persons about to seek the benefit of this act may wish, as indeed it is generally very desirable, that their own attorney, who has been necessarily acquainted with his affairs, should still act in the elucidation of them before the Court. The inability of many insolvents, when transferred from their professional adviser to the exclusive direction of the Court practitioner, to give satisfactory explanations of the

transactions, which indeed could only be well explained by the professional party engaged in them, was the source of considerable difficulty and sometimes of serious delay. As, however by the 38th section of this act, the insolvent can, having filed his petition and the order for hearing having issued, give bail and obtain his liberty till the day of hearing, there can be no objection to his still employing the attorney who may have been originally concerned for him. It must be observed that under the section above quoted large powers of selection are given to the commissioners, who shall and may admit at their discretion *fit* persons only. This power will be exercised as it ever has been by them, with impartiality and firmness, as the commissioners have uniformly demanded and received satisfactory information relative to the respectability of the party applying before admission; the usual process is to leave the name and address with the chief clerk, stating a desire to be admitted of record as an attorney of that Court, and by subsequently exhibiting the certificate for the current year, and if before that time in practice, the certificate for the year preceding. This extension will regard only attorneys in London, seeking to be admitted of the Court; in reference to applications from country attorneys who seek to act in the Court for any particular city or town to which the circuits extend, the practice will continue as heretofore; that is, by application in writing to the commissioners, stating that they intend personally to practise on behalf of insolvents in custody, and that the application is not made at the instance of or for the purpose of employing any person as clerk or agent to transact the business under colour of their names. They must also state if they have at any time taken the benefit of any act for the relief of insolvent debtors, and if so they must add the date of their discharge.<sup>a</sup>

"The application must be accompanied by a certificate signed by two practising barristers, certifying that they know the applicant, and that they believe him to be a respectable person, &c.

"The attorney will be held liable for all acts of his agents and clerks, and by whatever engagements made by them in his name he will be bound. The control of the Court over the conduct of its attorneys is almost unlimited;—a controul absolutely necessary from the effects which would ensue to unfortunate insolvents, either from neglect or errors in the setting forth of his papers. The country attorney is still, it will be observed, required to apply in a very especial manner for admission;

<sup>a</sup> This gives the court the opportunity of looking into the schedule and adjudication. If there have been any remand, the court will not admit the parties, and even in the event of the insolvency occurring without blame to the insolvent, the court will not immediately appoint the applicant, as it is ever jealous of an unfair influence being exercised over the prisoner in the selection of an attorney to conduct their cases.

the reason for that strictness, doubtless, is suggested by the fact, that insolvent debtors can only be heard on their petition and schedule once in four months. Errors caused by inattention, or want of knowledge, which experience alone can give, may be fatal to the discharge of the prisoner, even where no moral imputation rests on him. The strictness with which the commissioners adhere to the rules of practice laid down is absolutely necessary to enforce their observance. The consequences, therefore, of errors, or omissions, to the country insolvent, are serious, and have rendered inquiry and consideration necessary in the admission of attorneys to practise for the country.

"If after having been admitted an attorney of this Court, the practitioner should cease to be an attorney of the Superior Courts, and still practise in this, or if any person having been struck off the file of this Court, should continue to practise as attorney for insolvents, upon proof of either of these facts, the Court will declare the offender guilty of contempt, and may subject him either to fine, or imprisonment, for some definite period, either in the prison of the Queen's Bench, or in the common gaol of the county in which he resides.<sup>b</sup>

"If an attorney be himself a prisoner for debt, or otherwise, and shall continue still to practise, or should neglect in due time to take out his certificate of the Superior Courts; if he shall directly or indirectly employ any gaoler, turnkey, prisoner, or other person residing within any prison, as a clerk, or agent, to solicit retainers for him, to transact any business in this Court, he will be struck off the file.<sup>c</sup>

"The attorney's fees will be found under the head Costs. It may, however, be proper to observe that they are most moderately regulated, and when the qualifications requisite for a successful and correct practitioner are considered, appear hardly capable of adequately remunerating him. Those qualifications should include great arithmetical accuracy, and knowledge of banking and other book-keeping, conveyancing, and occasionally he may also be called on to become an advocate.<sup>d</sup>

"Generally, however, the taxation of the bill is not resorted to, as a specific sum is named and agreed on by both parties. The attorney, at the time of retainer, can well understand the extent of the services which will be required, and will ordinarily not hesitate to undertake the task for some moderate remuneration. Under particular circumstances the Court itself is empowered, upon proper application, to direct that a part of the expenses may be paid out of the insolvent's effects which may then be in the hands of the provisional assignee, or in default of such funds, from the profits or interests arising from any government securities upon which any unclaimed money produced by the estate and effects of

<sup>b</sup> Section 114, same as 7 G. 4, c. 57, s. 85.

<sup>c</sup> See Rule 4.

<sup>d</sup> In the absence of counsel.

such prisoner, or if that be not sufficient, out of the interest and profit arising from any unclaimed dividends of insolvent debtors. The Court before making any such order must be satisfied that the prisoner has not the means of defraying these expenses. Whatever sum, however, may be thus advanced from the Court, must be reimbursed out of the first proceeds from the estate of the insolvent vested in assignees.<sup>c</sup>

"The responsibilities of the attorney in this Court should be well considered, as it not unfrequently happens, that after the most diligent and zealous discharge of his duty to an insolvent, he is, by a want of decision in the earlier part of the proceedings, liable to considerable losses. If an attorney should agree in writing to undertake an insolvent's case for a certain sum, however the expenses may exceed the original calculation, the Court will compel him to complete.

"The payment in part is ordinarily made at the time of the retainer, and as much expense must immediately ensue in making all the inquiries necessary to frame the accurate description in the petition and the statements in the schedule, it is not unreasonable to say that some considerable part of the estimated costs ought at that time to be advanced. The only remedy an attorney has, when he has reason to believe it is not the intention of the insolvent to pay his costs, is to withhold his schedule. The Court will not compel an attorney who has accepted the retainer and filed the petition to proceed in filing schedule, but having filed the schedule he will be compelled to proceed, nor will the Court permit him after that stage to retain any papers which may be necessary at the hearing because he has not been paid his costs. So that it is for the attorney well to consider if he be safe in giving credit for his costs when he proceeds to file the schedule. It is the preparation of the schedule and the agency charges, the matters preceding the schedule, which are the attorney's heavy expenses, and therefore in his withholding the schedule on account of costs, he must necessarily be a considerable loser. It is better for both the client and the attorney that a fair proportion of the probable amount should be at once placed in the latter's hands at the time of retainer.

"The only remedy in case of failure in payment of the attorney's costs is by action at law, with the melancholy prospect of suing an admitted pauper, who must in all probability again resort to the same means of liberation.

"But the Court has ever expressed a desire to protect attorneys from this ungrateful fraud.

"Case.—*Re* Thomas Dyson, Nov. 2, 1822. Cooke's Pr. 15.

"Insolvent discharged in 1821, and had employed Mr. Brough, an attorney, whose bill he had never paid. Again arrested for the amount of such bill by Brough, and appeared before the Court with this debt only on his schedule. The Court said that they were bound to pro-

tect attorneys from so dishonest a practice, and dismissed the petition.

"The Court will not permit an insolvent to change his attorney after retainer, unless he has paid him the taxed costs up to the time of such change.

"*Form of memorial for the admission of an attorney to practise in the country.*

"To the honourable the commissioners of Her Majesty's Court for the relief of insolvent debtors.

"The memorial of *A. B.* of ——— gentleman, one of the attorneys of her Majesty's Court of Queen's Bench, at Westminster, sheweth—

"That your memorialist is desirous of being appointed an attorney of your honourable court.

"That your memorialist intends *bond fide* to practise therein; that this application is not made at the instance of or for the purpose of employing any particular person as clerk or agent.

"That your memorialist has never taken the benefit of the act for the relief of insolvent debtors, [*or if otherwise, state the time and place of discharge.*]

"That your memorialist has obtained a recommendation and testimonials of his respectability, signed by ——— and ——— Esqrs., barristers at law.

"Your memorialist therefore prays to be admitted an attorney of your honourable court. (Date—year.) *A. B.*

*Certificate to accompany the memorial.*

"This is to certify that we know personally *A. B.* of ———, attorney at law, that he is a person of respectability, and we consider him a fit and proper person to practise as an attorney of the court for the relief of insolvent debtors; and we do hereby recommend him as such respectable, fit, and proper person, to be appointed accordingly.

*C. D.* } Practising barristers of  
*E. F.* } the ——— circuit.

"Leave the above at the office of the Court, and produce the admission in the Superior Court, and the annual certificate for the current year."

Mr. Allen's work, in addition to the act 1 & 2 Vict. c. 110, contains full instructions to creditors, with all the Forms and Rules and Orders of Court; and it is due to the author to extract his statement of the scope and object of his labours.

"The Court for Relief of Insolvent Debtors has, until the passing of the present act, been experimental in its establishment. Such, however, have been the effects of the former acts, and so consonant have they been with every principle of justice, both to the debtor and creditor, that the abolition of arrest, hitherto the imagined safeguard of the latter, has been acquiesced in without objection or complaint. On the contrary, the creditor now deems himself more secure, deprived as he is, by this act, of his former monstrous power of exercising

<sup>c</sup> Section 118.

the office of judge in his own case,—and looks with implicit confidence in the establishment of this Court as his best and most satisfactory remedy.

"The present act is permanent, and from hence may be considered as forming a most important branch of the law of England, a fact which sufficiently evinces in itself the efficiency with which the objects of the late acts have been carried out, and how entirely satisfied both the legislature and the commercial interests of the country have been of the necessity and benefit of such a law, under the controul and direction of the learned commissioners, to whom its purposes are confided. The advantages which have already accrued to the creditor, who at one-twentieth the cost of pursuing the law in Bankruptcy, may summarily appropriate the effects of an insolvent to the payment of his debts—the strict and unwearying diligence with which all enquiries for the creditor's benefit are pursued—and the vast sums which by means of those enquiries have been recovered to the general benefit of creditors, lead us to hope that ere long the law of insolvency and bankruptcy may be amalgamated, and the latter more governed by the efficient regulations of the former.

"So vast a portion of the commercial world is interested in the effects of the present act,—changing wholly the powers of the creditor, that no apology is needed for a new book of practice on the subject. Those works which have already appeared, regard exclusively the effect of the alteration in reference to the Superior Courts, and the talented work of Mr. Cooke has not yet been remodelled. To his work on the former practice, and to that of Mr. Gill, I am much indebted for such parts of the law as have undergone no change; and for the forms and process, which are necessarily new, I must acknowledge myself greatly obliged to the courtesy and kindness of the several officers of the court.

"The great changes which empower an insolvent in execution to be bailed, and the creditor to petition, have been treated at length,—the forms have been closely examined at the several offices, and the work will, it is hoped, be found a correct guide to the practice;—more than to render it so has not been the ambition of the Author."

#### COURT OF EXCHEQUER GENERAL ORDERS IN EQUITY.

*Wednesday, 12th June, 1839.*

THE Court doth hereby order and direct in manner following—that is to say,

1. That every person to whom in any cause or matter pending in this Court any sum of money or any costs have been ordered to be paid, shall after the lapse of one month from the time when such order for payment was duly passed and entered, be entitled by his clerk in Court to sue out one or more writ or writs of fieri facias, or writ or writs of elegit, of the form herein

after stated, or as near thereto as the circumstances of the case may require.

2. That upon every such order herein-after to be entered, the entering clerk shall at the request of the party leaving the same, mark the day of the month and year on which the same shall be so left for entry; and no writ of fieri facias or elegit shall be sued out upon any such order unless the date of such entry shall be so marked thereon as aforesaid.

3. That such writs when sealed shall be delivered to the sheriff or other officer to whom the execution of the like writs issuing out of the Superior Courts of Common Law belongs, and shall be executed by such sheriff or other officer as nearly as may be in the same manner in which he doth or ought to execute such like writs; and such writs when returned by such sheriff or other officer shall be delivered to the clerks in Court by whom respectively they were sued out, or be left at their respective seats, and shall thereupon be filed as of record in this Court. And that for the execution of such writs, such sheriff or other officer shall not take or be allowed any fees other than such as are or shall be from time to time allowed by lawful authority for the execution of the like writs, issuing out of the Superior Courts of Common Law.

4. That if it shall appear upon the return of any such writ of fieri facias as aforesaid, that the sheriff or other officer hath by virtue of such writ seized, but not sold, any goods of the person ordered to pay such sum of money or costs as aforesaid, the person to whom such sum of money or costs is payable shall immediately after such writ with such return shall be filed as of record be at liberty by his clerk in Court to sue out a writ of venditioni exponas in the form herein after stated, or as near thereto as the circumstances of the case may require.

5. That on every such writ of fieri facias and elegit so to be issued as aforesaid, there shall be endorsed the words "By the Court," and also thereunder the calling and place of residence of the party against whom such writ shall be issued, and also the name and residence or place of business of the solicitor at whose instance the same shall be issued, and the name of the clerk in Court issuing the same, and that every such writ be also endorsed for the sum to be levied, costs of writ, sheriff's poundage, &c. according to the form used upon like writs issuing out of the Superior Courts of Common Law.

6. That for every such writ of fieri facias or venditioni exponas so to be issued as

**FORM OF WRITS.**

**To the Sberiff of** **greeting:**

<sup>b</sup> The day on which the writ issues.

**To the Sheriff of**

**b The day mentioned in the order.**

**c The costs.**

<sup>d</sup> The money.

\* The date of the order, or, if that were prior to the 1st October, 1838, say, "from the 1st day of October, 1838."

<sup>f</sup> The date of the Master's certificate, or, if that were prior to the 1st of October, 1838, say, "from the 1st day of October, 1838."

day of ,<sup>1</sup> and that you have that money and interest before us in our said Court immediately after the execution hereof, to be paid to the said *A. B.* in pursuance of the said decree or order, (*as the case may be*): and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf, and in what manner you shall have executed this our writ, make appear to us in our said Court immediately after the execution thereof: and have there then this writ. Witness, &c.

[*To be continued.*]

### ATTORNEY'S WEARING GOWNS IN COURT.

*To the Editor of the Legal Observer.*

I AM glad to find that this subject is beginning to excite some little attention; I cordially agree with the views of those gentlemen who have addressed you on this subject; indeed I have been studying for sometime how the matter may be best brought about, and have been only waiting to collect as much evidence as possible to establish the *right* of attorneys to wear gowns in Court, before I addressed the Judges, either in the shape of a private letter, or a memorial, on the subject, on behalf of myself and other legal men in this town.

In several old prints which I have seen, attorneys are drawn in *wigs* and gowns; but whether the wig was superadded in consequence only of the then general fashion of all gentlemen to wear wigs, I do not know, but so they are drawn in many old prints: neither can I find out, from conversations with the relatives of old attorneys, whether the wigs and gowns were worn by attorneys after the general fashion of wearing wigs became obsolete.

As to the gown it is perfectly clear; and after the opinion which you have given of the undoubted right which attorneys have to wear a gown, I think no attorney would be acting improperly in appearing in Court clothed in the robe of office. Individually I intend, the first time I am in London, to procure a gown, and always appear in it, both at the assizes and in the Sheriff's Court, and several of my brethren with whom I have conversed on the subject have expressed a like determination.

If you think the Judges would, upon being memorialised, intimate a wish for attorneys to appear in gowns when in Court, I would immediately prepare a memorial and canvass this town for signatures, and have no doubt other towns would soon follow the example.

I should like to know if there were any difference in the gowns of the old *attorney* and the *solicitor* in Chancery?

A COUNTRY ATTORNEY.  
*Birmingham, 5th June, 1839.*

<sup>1</sup> The date of the Master's certificate; or, if that were prior to the 1st of October, 1838, say, from the 1st day of October, 1838.

### RETIREMENT OF MR. LE BLANC.— THE NEW MASTER.

WE learn with regret that the resignation of Mr. Le Blanc, as one of the Masters of the Court of Queen's Bench, has been occasioned by illness. He carries with him the good wishes and universal respect of the Profession. He discharged the duties of his office ably and impartially, yet with much urbanity. He was called to the Bar in Trinity Term, 1803, and has long been Master of Trinity Hall, Cambridge.

C. R. Turner, Esq., formerly a Solicitor of the eminent firm of Parnter & Turner, and now a Barrister at Law, has been appointed a Master of the Court, on the resignation of Mr. Le Blanc.

### SUPERIOR COURTS.

#### *Lord Chancellor's Court.*

PRACTICE.—LUNACY.—CARRIAGE OF THE COMMISSION.

*Two petitions for a commission of lunacy, one by the supposed lunatic's wife, who expressed her intention to limit the pending of the lunacy to a recent period; the other by the lunatic's brothers, wishing to carry the finding back to a remoter period: Held, that the brothers, on whom lay the affirmative, ought to have the carriage of the commission.*

Two petitions were presented for a commission to inquire into the soundness of Mr. Whittaker's mind; one, which was the first in date, was by Mrs. Whittaker, his wife; the second was by the brother and brother-in-law of the supposed lunatic.

Mr. Spence and Mr. Wood, for Mrs. Whittaker.—There was no doubt of the propriety of issuing the commission. The only question was, who should have the carriage of it. The wife first presented her petition; and on that ground, and also because she best knew the habits of her husband, what were the delusions, and how and when they began, she ought to have the carriage of the commission. The supposed lunatic made a will in 1835, in favour of his wife and only child, who is now only three years of age. He was then of unsound mind, and the wife was anxious to limit the finding of the jury to a period which the witnesses would fix at some period subsequent to 1835. On the other hand, the brother of the supposed lunatic, and the husband of his sister, were anxious to carry the unsoundness of mind to a remoter period, so as to destroy the will; in which case, and in the event of the child's dying under twenty-one years of age, (not an improbable event), they would, as next of kin, come in for the lunatic's property, except the wife's legal portion. She had hitherto done every thing in her power for the



lunatic's protection; whereas the brother and brother-in-law seldom took any trouble about him. The Court would, in this matter, be governed solely by the consideration of what is necessary for the protection of the lunatic's person and property, without any regard to the interested motives which actuated parties. "Such feelings," as his Lordship said *In the matter of J. B.*,<sup>a</sup> "cannot operate on the mind of the Court, which, in deciding of questions of this kind, must be governed solely by the consideration of what is necessary for the protection of the person and property of the party, &c." The further observations of his Lordship in that case were quite applicable to the present.

The Lord Chancellor—I refused a commission in that case, because I did not think it necessary. His Lordship (without hearing Mr. Wigram, who appeared to support the brother's right to prosecute the commission) said the brother alleges he will establish the insanity at a remoter period than that to which the wife wishes to limit it. She very candidly says that she wished the finding to be subsequent to 1835, so as to preserve the will. She states her reasons. It will be for the jury to find the true period, according to the evidence brought before them and the commissioners. As the brother states that the unsoundness began at an earlier period, and therefore, the affirmative lies on him, it is proper he should have the carriage and prosecution of the commission.

*In the matter of Whittaker*, at Westminster, May 25, 1839.

#### Vice Chancellor's Court.

##### PRACTICE.—PRODUCTION OF DOCUMENTS.—THE TIMES.—COSTS.

*To a bill filed for accounts of a partnership business, a defendant answered, admitting possession of some documents relating to the accounts, and stating that others were in possession of another person for the benefit of all the partners. Neither that person nor some of the partners were made parties to the suit. Held, upon motion of production of both sets of documents, that though the plaintiff was entitled of course to those in possession of the defendant, yet, failing in the other part of the motion, the plaintiff should pay the costs of the whole, as being a mere experiment.*

This was a motion for the production of documents, and particularly of account books, relating to expenditure and profits of the Times Newspaper, admitted by Mr. Walter, one of the defendants, to be in his possession, or in the possession of the treasurer of the concern. The bill was filed by Mrs. Murray, widow and administratrix of Mr. James Murray, who died in 1834, for an account of the profits of the newspaper from the month of November 1819, when Mr. Murray became proprietor of a moiety of a sixteenth share;

and it stated, among other things, that Mr. Murray commenced his connection with the paper in 1815, first as a reporter in parliament; and that he was afterwards engaged in the foreign correspondence department of the newspaper, at a salary of 500*l.* a year, and that in 1819 he purchased a moiety of a sixteenth share in the concern from Mr. Walter, for 1,400*l.*, subject to a proviso that Mr. Walter should have liberty to re-purchase the share at any time, at the same rate, on giving six months' notice of his intention. It appeared from the answer of Mr. Walter that Mr. Murray's salary was increased to 800*l.* a year for his services on the Times and the Evening Mail, another newspaper belonging to the same concern, and that he had regularly received his share of the profits up to the time of his death, and had given receipts for the same to the treasurer, who was the common agent of all the proprietors, and made out the accounts of the profits and paid the amounts; and that Mr. Murray had during his whole life acquiesced in the treasurer's accounts, and that upon his death Mrs. Murray in like manner received her share, and never disputed the correctness of the accounts, or called for any investigation of them, until December 1837, after Mr. Walter had given her notice of his intention to re-purchase her share, and that it was the notice that led to claims on her part for a general account. After some negotiation for settling these claims, the bill was filed in the present year against Mr. Walter, Mr. Alsager, and Mr. Lawson, alleging that the names of the other proprietors were not known to the plaintiff, and insisting that the notice had been waived and that no account had ever been rendered. Mr. Walter by his answer, after stating as above stated, and relying on the receipts as a full discharge, admitted that he had in his possession certain papers relating to Mrs. Murray's claim, and that the treasurer, Mr. Delane, had various accounts in his possession, the particulars of which accounts he (Mr. Walter) did not know. The answer was excepted to, as it did not state the documents in Mr. Delane's possession, and the exception was allowed. Mr. Walter put in a further answer, setting out what the documents were, and alleging that they were in Mr. Delane's possession for the benefit of all the shareholders.

Mr. Richards and Mr. Romilly moved on these admissions for the production of both sets of documents.

Mr. Jacob and Mr. Bacon appeared to oppose the motion, as far as concerned the documents in the treasurer's possession.

The Vice Chancellor said, if the motion were opposed as to these latter documents, he would not make the order in the absence of the other proprietors, who were equally interested in them.

Mr. Jacob asked for the costs of the motion, and observed upon the object of the bill, remarking that Mrs. Murray had been offered 100*l.* a year and 2,000*l.* in hand for her share.

Mr. Richards opposed the application for costs.

<sup>a</sup> 1 Myl. & C. 538; sup. 541.

The *Vice Chancellor* thought the motion was a mere experiment. If it had been confined to the documents in Mr. Walter's possession, it would be a motion of course. His Honour mentioned a determination formed by Lord *Elion*, when he found the practice growing up in his Court of making motions of an experimental nature, by adding doubtful matter to motions of course, in which cases that learned Judge held that the parties making such experiments, and failing in them, should pay the costs of the whole motion, although part of it might be granted. Taking that view of this motion His Honour would give the costs of the motion to Mr. Walter, on his producing the papers in his own possession.

*Murray v. Walter and others*, at Westminster, June 9th, 1839.

### Queen's Bench.

[Before the Four Judges.]

#### PRACTICE.—PRISONER.—STAYING PROCEEDINGS.

*The 32 G. 2, c. 28, which gives a prisoner the right to complain to the Court of any abuse whatever practised towards him by the keeper of the prison, and authorizing the Court to give him relief upon such summary application, and to award him compensation, and to punish the keeper of the prison, does not take away the prisoner's common law right of action for any such grievance. But it seems that if the prisoner had obtained a compensation upon a summary application, the Court would not allow him afterwards to proceed by action.*

In this case a rule had been obtained calling on the plaintiff to shew cause why the proceedings should not be stayed. It appeared from the affidavits on which the rule was obtained, that the present plaintiff was a person who had been confined in the Queen's Bench Prison; that a complaint was made against him for misconduct there; that the defendant, who was the marshal of the prison, heard the complaint, the allegations against the plaintiff, and his answer, and having fully investigated the matter, decided that the complaint was well-founded; that the plaintiff should for a stated period be confined in the strong room of the prison. The plaintiff was confined there accordingly. This occurred in the month of April, 1837. Some time afterwards, he was liberated from prison, and in January 1838, he issued a writ of summons against the defendant for this alleged trespass and false imprisonment. No further proceedings were taken till January, 1839, when a declaration was filed. The defendant then obtained this rule, on the ground that the jurisdiction exercised by the marshal was vested in him by certain acts of parliament and orders of Court made thereon, and that if he had exceeded his authority, or improperly exercised it, the pro-

per remedy was not by action, but by summary application to the Court.\*

Mr. *Platt* shewed cause.—This is entirely an application of the first impression. There is no instance of any such rule having before been granted or even applied for. If this action can be stayed upon a summary application like the present, a prisoner may be very ill-treated in prison, and yet have no redress. The act which gives the summary application does not take away the right of action. It enables the Court to punish the officer, but still leaves the prisoner to seek compensation in damages for his own particular injury. The right of action is a common law right, and cannot be taken away but by express enactment. There is none such here. If that was not the case, the marshal would be in a better situation than all other magistrates in the kingdom, for against any of them a party injured may maintain an action of false imprisonment. The act is a remedial act for the benefit of prisoners, and for nothing else. It does not take away from them any right which they before enjoyed.

The *Attorney General* in support of the rule.—If this is the first time that an application like the present has been made, this is also the first time that an action like the present has been brought. That argument therefore may be dismissed from the consideration of the Court. This case must be decided entirely by the construction to be given to the statutes and the rules of court. By the provisions of a rule, H. T. 29 G. 3, the marshal must hear the complaint and must act upon it. To carry that rule into full effect in cases not before provided for, this Court made a rule in the 6 G. 4, by which it is ordered that prisoners offending may be confined in the strong-room of the prison for any space of time not exceeding one calendar month, and

them. The 11th section enacts that upon the petition in term time of any prisoner, being or having been under arrest or in custody, complaining of any extortion, &c. by any jailer, bailiff, &c., or in the respect of arresting or apprehending any person by virtue of any process or warrant, or of any other abuse whatsoever, committed or done in their respective offices or places unto any of His Majesty's Courts of Record at Westminster, under whose power any such prison &c. is, every such Court, &c. is hereby authorized and required to hear and determine the same in a summary way, and to make such order thereupon for redressing the abuses which shall by any such petition be complained of, and for punishing such officer or person complained against, and for making reparation to the party or parties injured, as the said Court or Judges shall think just, together with the full costs of every such complaint. And all orders and determinations which shall thereupon be made in such summary way as is herein prescribed shall have the same effect, &c., and may be enforced by attachment, as the other orders of the said Courts and Judges may be enforced."

\* 32 G. 2. c. 28. The 6th section gives authority to the Court to make rules respecting the management of the prisons belonging to

the marshal is directed to enter in a book to be kept by him for that purpose what is done in the case, together with the cause of the confinement, and this book is regularly to be laid before the Court. It is clear that the marshal has acted within his jurisdiction, and has only done what the law required him to do. There is no complaint made of the manner in which the proceeding was had, nor is there the smallest denial of the affidavit made by the marshal, that upon complaint duly made to him he called the prisoner before him, heard evidence in support of the complaint, and heard all that the prisoner could offer, in observation or evidence, in answer to the charge, and having done so, made his order for the confinement of the prisoner in the strong-room of the prison. The law and the facts seem alike in favour of the marshal, who is compelled to exercise his jurisdiction, and who has exercised it fairly. If he has not, the statute gives the prisoner a right to complain to the Court, and authorises the Court to enquire into the matter of the complaint, and to punish the offender. But this is not all—it gives a remedy to the party aggrieved, and empowers the Court to award him compensation. It cannot be contended that the plaintiff would not have a right to obtain compensation in this manner. But then, if he has, he cannot likewise obtain compensation by action. The statute in giving the one meant it to be in lieu of the other. The provisions of the statute were manifestly intended to give a prisoner a quick, a certain, and an economical remedy, and at the same time to save the marshal, when he acted fairly in the discharge of his duty, from vexatious actions at law at the suit of parties who when defeated on the merits would never be able to pay costs. To give any other construction to the statute will be to impose a great hardship on the marshal, and to defeat the provisions of an act of parliament. The act is a remedial act, but it is so for both parties, and must be so construed to carry it into full effect.

*Cur. adv. vult.*

Lord Denman afterwards delivered the judgment of the Court. After referring to the statutes and the rules of Court under which the prison of this Court is regulated, his Lordship proceeded:—Under these statutes and rules, power is given to the keeper of a prison to imprison in the strong room any person who shall misconduct himself by offending against these provisions and directions; and by the same the Courts have authority and are required to hear complaints against such keeper of a prison, and to award compensation to the party aggrieved, and to direct payment of costs. It has been contended that the legislature never meant to allow the prisoner a right to compensation in this way, and also a right to bring an action. But the statute does not contain any restrictive words stopping him from resorting to his common law right to an action. We think that by the provisions of the statute the remedy by summary complaint is cumulative, and that the statute does not take

away from the party the power to bring an action. If, however, the party availed himself of the summary remedy, and afterwards brought an action, we might act upon the principle laid down by Lord Mansfield in *Cameron v. Reynolds*,<sup>b</sup> which amounts to this, that a rule of Court giving specific relief in a case where by law the party is not entitled to two different remedies, may be treated as a bar to an action for the same cause. But under the circumstances as they now stand, we think that the Court has no authority to stay the present proceedings. The rule will therefore be discharged, but without costs.

Rule discharged, without costs.—*York v. Chapman, Esq.*, T. T. 1839. Q. B. F. J.

### Common Pleas.

#### SPECIAL BAILIFF.—ESCAPE.

*Where on the trial of an action for an escape, it appeared that the agent of the plaintiff requested that the warrant might be made out to a certain officer, to whom he gave instructions, and whom he took in a phaeton to the place where the arrest was to be made, where he required him to execute the warrant in a certain manner: Held, that a nonsuit on the ground that the bailiff was the special bailiff of the plaintiff was rightly entered.*

This was a rule calling upon the defendant to shew cause why the nonsuit entered at the trial of the cause should not be set aside and a new trial had. It was an action brought against the sheriff for escape, and the question which arose upon the rule was, whether the bailiff who had been employed, was the special bailiff of the plaintiff. It appeared at the trial that one Roberts was the agent of the plaintiff, and that he had gone to the under-sheriff and desired that the warrant should be made out to Price, the bailiff, and that he sent for Price and gave him the warrant, and gave him the necessary instructions; that he subsequently took Price and his assistant in a phaeton, which he hired, to the place where the arrest was to be made, and that then in order to make the caption, he required him to procure admission to the house of the person against whom the warrant was directed, by breaking through a piece of brown paper placed over a window.

*Wilde, Serjt., Ludlow, Serjt., and Gray*, now shewed cause, and contended that Price must be taken to be the special bailiff of the plaintiff, and that, therefore, the nonsuit was right. In *Ford v. Leche*, 6 Ad. & El. 699, the writ was sent to the under-sheriff, with a request that the warrant might be made out to a particular officer, and the party added "I shall be obliged if you will do so," and therefore no distinction could be drawn between that and the present case. The agent Roberts gave the sheriff no power to instruct the officer, and it was evident that if such an authority had remained to the sheriff he would not have permitted his officer to

<sup>b</sup> Cowp. 406.

break into the house. The principle that the mere request to the sheriff to hand the warrant to a particular officer, did not discharge the sheriff, was admitted; but it was contended that any interference of the party with the nomination of the bailiff was sufficient to do so. There was an interference here both before the delivery of the warrant and subsequently. They also cited *Bulson v. Meggatt*, 4 D. P. C. 557; *Porter v. Viner*, 1 Chitt. Rep. 613, n.; *Pallister v. Pallister*, ib. 614, n.; *De Morandu v. Dunkin*, 4 T. R. 119; *Foster v. Blakelock*, 5 B. & C. 328.

**R. V. Richards** in support of the rule. It was notorious that every attorney was in the habit of employing some particular bailiff, and there was scarcely an attorney from whom a request was not sent to the sheriff that the writs issued in his name might be sent to some particular officer. Roberts, the plaintiff's agent in this case, had merely requested that the warrant should be directed to Price, and he told Price of it, and delivered it to him. He cited *Corbett v. Brown*, 6 D. P. C. 794.

**Tindal, C. J.**—I think that this case may be decided on one ground only, by our holding that the illegal arrest which took place, and the breaking open the door of the man's house, was not the act of the sheriff, but that of Roberts, the plaintiff's attorney, directing the bailiff of the sheriff, and therefore for that purpose making him the special bailiff of the plaintiff. If the matter had rested upon the circumstances of the granting of the warrant, it would have brought the case very near that of *Ford v. Leche*, but when we see what takes place after that, it very strongly corroborates

the opinion which I have expressed, and I think it is impossible to come to any other conclusion, for when the arrest is about to take place he carries the bailiff to the spot, and when some doubt arises in the mind of Price whether he will enter the house or not of the defendant against whom the warrant is directed, he is assured by Roberts that it is a safe course to pursue, and that unless he does enter the house he will rule the sheriff to return the writ. Therefore it was not left to the judgment or understanding, or experience which Price possessed, but he was acting on that occasion upon the urgency of the party. The sheriff therefore was entitled to let the defendant go out of his custody, and the nonsuit which has been entered is correct.

*Vaughan, J.*—I am of the same opinion. It has been admitted that the mere request to name one of many bound bailiffs of the sheriff does not operate as an appointment of the bailiff so as to relieve the sheriff; but here there is a great deal more, because when the writ is delivered to Price, the plaintiff's agent gives him his instructions, and sends for a carriage in which he takes him to the place where the arrest is to be made, and then he limits and controls his discretion, and, being an attorney, gives him his opinion upon what may be done. Therefore he was an agent acting for and representing the plaintiff, altogether taking the matter out of the hands of the sheriff, and excusing him from all responsibility.

*Coltman, J., and Erskine, J., concurred.*

Rule discharged.—*Doe v. Trye*, T. T. 1839.  
C. P.

## CIRCUITS OF THE JUDGES.

[illegible]

## SITTINGS OF THE COURTS,

*After Trinity Term, 1839.***Before the Master of the Rolls.**

## AT THE ROLLS.

Monday .. June 17	} Pleas, Demurrers, Causes, Further Directions, and Exceptions.	
Tuesday .. 18		
Wednesday .. 19		
Thursday .. 20		
Friday .. 21		
Saturday .. 22	Motions.	
Monday .. 24	} Pleas, Demurrers, Causes, Further Directions, and Exceptions.	
Tuesday .. 25		
Wednesday .. 26		
Thursday .. 27		
Friday .. 28		
Saturday .. 29		
Monday .. July 1		
Tuesday .. 2		
Wednesday .. 3		
Thursday .. 4		
Friday .. 5		
Saturday .. 6	Motions.	
Monday .. 8	Petitions in Gen <sup>l</sup> Paper.	
Tuesday .. 9	} Pleas, Demurrers, Causes, Further Directions, and Exceptions.	
Wednesday .. 10		
Thursday .. 11		
Friday .. 12		
Saturday .. 13		
Monday .. 15		
Tuesday .. 16		
Wednesday .. 17		
Thursday .. 18		
Friday .. 19		
Saturday .. 20	Motions.	
Monday .. 22	} Pleas, Demurrers, Causes, Further Directions, and Exceptions.	
Tuesday .. 23		
Wednesday .. 24		
Thursday .. 25		
Friday .. 26		
Saturday .. 27		
Monday .. 29		
Tuesday .. 30		
Wednesday .. 31		
Thursday Aug. 1	Motions.	
Friday .. 2	Petitions in Gen <sup>l</sup> Paper.	

Short and Consent Causes, and Consent Petitions, every Tuesday at the Sitting of the Court.

## LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

**Royal Assents.**

14 June, 1839.

Designs Copyright.  
Durham Court of Pleas.

**House of Lords.**

For regulating the Proceedings of Borough Courts. [For 2d reading.]  
Belper,—Hatfield,—Halifax,—Huddersfield,  
and Bradford Small Debts Court Bills.

**House of Commons.**

## ADMINISTRATION OF JUSTICE.

To improve County Courts.

[In Select Committee.] Lord John Russell.

To make perpetual the 1 Vic. c. 80, for exempting certain Bills and Notes from the Usury Laws.

The Chancellor of the Exchequer.

[Passed.]

To amend the Practice of the Stannary Courts of Cornwall. [For 2d reading.]

To amend the Imprisonment for Debt Act, as to Advertisements.

[Passed.] The Attorney General.

## LAWS OF PROPERTY.

To amend the Law of Copyright.

[In Committee.] Mr. Serjt. Talfourd.

For the Enfranchisement of Lands of Copyhold and Customary Tenure.

[For 3d reading.] Mr. James Stewart.

## LAW OF ELECTIONS.

For establishing a Court of Appeal from the Revising Barristers. [Mr. C. Buller.]

[For 2d reading.]

*Bills postponed during the week.*

Registration of Electors.

The remaining Bills remain as notified last week.

## THE EDITOR'S LETTER BOX.

A Correspondent states, that in the case of an application to hold to bail under the 1 & 2 Vict. c. 110, his affidavit stated that the defendant had been informed by letter received from one *A. B.* that it was the defendant's intention to leave this country, and go to reside in France; but it did not go on to state that the defendant *believed the contents of such letter to be true*, and on the latter ground Mr. Baron *Alderson* held it to be bad; and our Correspondent says it appears to him that the form of affidavit given at p. 104, *ante*, is wrong in the same respect, in not verifying the statements of the letter. If he will read the affidavit again, he will find in the 9th line, that this verification is given.

The Letters of "Civis" and "Spes" shall appear at the first opportunity.

We are obliged by the list of Barristers called last Term in the Middle Temple, but must ourselves obtain the list of that and the other Inns of Court.

We regret the necessity of postponing the notices of several new publications.

"A Country Articled Clerk" is informed that the assignment of his articles should be enrolled according to the 22 G. 2, c. 46. s. 9.

The communications relating to City Courts are acceptable. We are obliged to our correspondent for his able assistance, and thank him for his frank permission to deal with his papers as may be considered expedient.

The letter of "A Barrister," on the abuse he mentions, shall be inserted. The statement of Z. A. regarding the grievance of the Chancery Office Holidays, shall also appear.

# The Legal Observer.

SATURDAY, JUNE 29, 1839.

— "Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## LETTERS TO THE LORD CHANCELLOR.

### LETTER VI.

#### ON THE ARREARS OF BUSINESS IN EQUITY.

My Lord,

NEARLY six months have elapsed since I had the honour of addressing you on the subject of the Arrears of Business in Equity, and I now return to this melancholy subject with no common feelings of pain. In my former letters I laid before your Lordship the true state of the case: I called your attention to the deplorable pressure of business, and the impossibility of dispatching it: I shewed what was to be heard, but that the hearing was next to impossible: I arrayed the goodly list of those who had declared that the present mode of administering equity (alas! a frightful mockery of the words!) is an intolerable grievance to the suitor, and I ventured respectfully to call on your Lordship to apply the proper remedy. I am now desirous of renewing the subject, with the view of seeing what has been done since I had the honour of addressing you. But first let me ask whether there has been any alteration for the better since the date of my last letter? How stand the lists of causes and other matters in all the Courts of Equity? Are they decreased? Where are the unhappy suitors? Are they nearer the attainment of their just rights? These questions may be easily answered. The arrear of business is greater than ever.\* The suitors are still without justice: their causes remain unheard, and before they are finally disposed of they may be in their graves.

And now, my Lord, who denies that this

is the plain and naked truth? Not the suitor,—reduced perhaps to beggary, or lingering in a prison. Not the solicitors;—they are reminded of the truth too frequently and too painfully. Not the bar;—they call aloud for redress. Not the Judges;—two of them, your Lordship and the Master of the Rolls, have admitted that the grievance is intolerable. But is this a party question? The subject has been brought before the House of Commons by Mr. Pemberton and Mr. Freshfield, and before the House of Lords by Lord Lyndhurst; and the deplorable state of things has been admitted by the government. This is almost the only subject from which, in the present Session, party feeling has been altogether banished. Indeed no public man dare oppose a remedy for the grievance. It is not a point of politics; it is a matter of life and death; in many cases of bread. The property of thousands is now locked up, or fraudulently detained from them. They demand their own; their prospects are ruined; their families or themselves are fast sinking into want; in many cases (it is no exaggeration) they need the necessaries of life. They cannot obtain their rights; oftentimes not so much from the fraud or ill-conduct of others, as from the impossibility of having their cases decided by the proper tribunal. This is evidently not a state of things in which mere party feeling dare impede a settlement. There is therefore not any embarrassment on this ground.

And now, my Lord, I venture, most respectfully, to carry out my premises to a conclusion. Why is not a remedy applied, or at any rate attempted, by her Majesty's government? From whom should it come but them? and from what individual among

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\* See *ante*, p. 51. ED. L. O.  
VOL. XVIII—NO. 533.

them but your Lordship, as the Head of the Law? I say this with no feeling of reproach. The suitor in equity is under the greatest obligations to you. Since you held the Great Seal you have been indefatigable, not merely in dispatching business, but in dispatching it satisfactorily. You have, moreover, done great good to the cause of Chancery Reform by your ready admission of the existing evils—which Judges are too fond of endeavouring to conceal or palliate—and by your proposing a plan for their redress, which, if not the most complete or effectual, is an immense step towards a proper settlement. Remembering these things, I implore your Lordship not to allow the Session to close without introducing a measure of redress. Do not allow another long vacation to set in upon the suitor without at least an effort to relieve him. Let him know that the Lord Chancellor is earnest in his cause, not only by deciding it when it comes on, but by expediting that desirable event. Permit me to assure your Lordship that sound views as to the proper remedy—I mean the separation of the political from the judicial functions of the Chancellor, and to which no one has contributed more than yourself—are fast gaining ground. The bulk of the profession is now of that opinion, and the enlightened part of the public have long given it their sanction. Converts are daily coming in, and probably the circumstance which has most contributed to this, is the chance that an unlucky division in the House of Commons might deprive the Court of Chancery of its most able Judge. I trust that I may soon hail the introduction of the government plan; and in the mean time,

I have the honour to be,  
My Lord,

Your Lordships most obedient servant,  
A BARRISTER.

*Lincoln's Inn, June 26, 1839.*

[We refer our readers to the report of the last debate on this subject in another part of this number. *ED. L. O.*]

## THE PROPERTY LAWYER.

### LICENCE TO DEMISE.

ONE of the greatest hardships of copyhold tenure is the inability of the tenant to demise his land. In most manors the tenant cannot demise without the lord's consent; and although a Court of Equity will perhaps interfere to compel the lord to grant his li-

cense for that purpose; (see *Ballard v. Agard*, 6 Vin. Ab. Copyhold, Y. e.); yet from the following case it would seem that a mandamus will not issue, under any circumstances, to the lord to grant a licence. *Lord Denman*, C. J.—This was an application for a writ of mandamus to the lord of a manor, to grant to a tenant a licence to demise his copyhold for a term of years. The only ground for the application is an alleged custom in the manor, that the lord should receive 4*d.* per annum for such a licence. Independent of such a custom, it is plain that the granting or refusing a licence is a matter wholly in the lord's discretion; and the question is, what is the operation of such a custom. On the one hand it is said, that if the lord can, notwithstanding the custom, refuse to licence altogether, he may indirectly extort a larger sum for a licence than the custom warrants, and that therefore his discretion must be taken away. On the other hand it is urged, that if the custom compels the lord to licence, it in effect amounts to a custom to demise without licence, paying 4*d.* per annum, which custom is not directly assumed nor pretended to exist; but if it do exist, the tenant may demise on tendering the 4*d.* per annum, without danger of forfeiture, and does not want the assistance of this Court. No instance is to be found of this Court granting a mandamus to the lord to licence under any circumstances. It is said to have been decided that he may be compelled to do so in equity, but the authority cited is by no means clear or satisfactory. Under these circumstances, we are of opinion that the rule for a mandamus must be discharged. Rule discharged. *Reg. v. Hale*, I P. & D. 293.

## NEW BILLS IN PARLIAMENT.

### PROTECTION AGAINST BANKRUPTCY.

This is "An Act for the better Protection of Parties dealing with Persons liable to the Bankrupt Laws."

Whereas by an act passed in the sixth year of the reign of his late Majesty King George the Fourth, intituled "An Act to amend the Laws relating to Bankrupts," it was among other things enacted, that all payments really and *bonâ fide* made by any bankrupt, or by any person on his behalf, before the date and issuing of the commission against such bankrupt, to any creditor of such bankrupt, (such payment not being a fraudulent preference of such creditor,) should be deemed valid, notwithstanding any prior act of bankruptcy by such bankrupt committed, and that all payments

really and *bond fide* made to any bankrupt before the date and issuing of the commission against such bankrupt should be deemed valid, notwithstanding any prior act of bankruptcy committed, and that such creditor should not be liable to refund the same to the assignees of such bankrupt, provided the person so dealing with the bankrupt had not at the time of such payment to such bankrupt notice of any act of bankruptcy committed: And whereas by an act passed in this present session of parliament, intituled "An Act for the better Protection of Purchasers against Judgments, Crown Debts, Lis pendens, and Fiats in Bankruptcy," it is amongst other things enacted, that all conveyances by any bankrupt *bond fide* made and executed before the date and issuing of the fiat against such bankrupt shall be valid, notwithstanding any prior act of bankruptcy by him committed, provided the person or persons to whom such bankrupt so conveyed had not at the time of such conveyance notice of any prior act of bankruptcy by him committed. And whereas it is expedient that further protection should be given to persons dealing with bankrupts before the issuing of any fiat against them: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in this present Parliament assembled, and by the authority of the same, that all contracts, dealings, and transactions by and with any bankrupt really and *bond fide* made and entered into before the date and issuing of the fiat against him, and all executions and attachments against the lands and tenements or goods and chattels of such bankrupt, *bond fide* executed or levied before the date and issuing of the fiat, shall be deemed to be valid, notwithstanding any prior act of bankruptcy by such bankrupt committed; provided the person or persons so dealing with such bankrupt, or at whose suit or on whose account such execution or attachment shall have issued, had not at the time of such contract, dealing, or transaction, or at the time of executing or levying such execution or attachment, notice of any prior act of bankruptcy by him committed; provided also, that nothing herein contained shall be deemed or taken to give validity to any payment made by any bankrupt being a fraudulent preference of any creditor or creditors of such bankrupt.

2. And be it further enacted, that this act may be repealed or altered by any other act in this present session of Parliament.

#### SERJEANTS AT LAW.

The various opinions as to the granting serjeants exclusive audience in the Court of Common Pleas, are collected by the Common Law Commissioners in their First Report, pp. 24—27; and while they recommended that this should be, as a general rule, retained, yet they thought, upon motions for new trials, if the cause had been tried on circuit, the barristers engaged on such trials, though with-

out the rank of serjeant, should have audience in the Common Pleas. It is well known, however, that by the Royal warrant, dated April 25th, 1834, all pre-audience whatever was taken away from the serjeants. This warrant has, however, lately been made the subject of judicial proceedings before the Judicial Committee of the Privy Council, to which we have already adverted (see 17 L. O. 230); and the following bill has been brought in for the purpose of carrying into effect the recommendation of the Commissioners, thus indirectly annulling the Royal warrant:

The Bill is intituled "An Act to regulate the Course of Proceeding in the Court of Common Pleas, so far as relates to the Practice and Hearing of Counsel therein in Term Time."

Whereas it is expedient to regulate the course of proceedings in her Majesty's Court of Common Pleas at Westminster, so far as relates to the exclusive privilege of serjeants at law to practise and to be heard therein during term time: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this act, in all motions already pending or which shall be made in the said Court touching the trial of any cause or issue which has been or shall have been tried at the assizes holden for any county, city, or place, other than London or Middlesex, by virtue of any writ of *Nisi Prius*; and also in all such motions touching the execution of any writ of inquiry before any judge at the assizes in the country; and also upon all such motions touching the execution of any writ of inquiry directed to any sheriff or sheriffs of any county, city, or place whatever, or any writ of trial directed to any such sheriff or sheriffs, or to any judge of an inferior court of record, it shall be lawful for any barrister at law, not being of the degree of the *coif*, who was or were actually engaged or concerned and present on the occasion of such trial or inquiry, according to their respective ranks and seniority, to have and exercise equal right and privilege of practice, pleading, and audience in the said Court of Common Pleas with the serjeants at law in term time, as well in respect of making and supporting as of opposing such motions as are herein-before mentioned: Provided always, that nothing herein contained shall prevent any such barrister or barristers at law from carrying on and bringing to a conclusion any other matter of law or business pending in the said Court of Common Pleas, in which he or they were already engaged at the time of passing this act, in the same manner as if this act had not been passed: Provided also, that nothing herein contained shall be construed to extend to the opening of the said Court of Common Pleas to the practice therein by barristers at law, not being of the degree of the *coif*, in any other manner or to any other extent than is herein-before specified and contained.



## NOTICES OF NEW BOOKS.

*Suggestions for a General Equalization of the Land Tax: with a view to provide the means of reducing or abolishing the Malt Duties: and a statement of the Legal Rights and Remedies of Persons unequally assessed to Land Tax in particular districts or places.* By Samuel Miller, Esq., Barrister at Law. London, Butterworth.

It is not within our province to consider the fiscal part of this publication, further than to express our opinion that Mr. Miller has very ably and usefully stated his views, and discussed the objections which may be urged against them.

We are glad, however, to direct the attention of our readers to the following clear and accurate statement of the legal rights and remedies of persons unequally assessed to the land tax.

"When a disease has obtained the reputation of being incurable, it is too much the habit of individuals to neglect even those remedies which might tend to alleviate its effects; and a similar feeling prevails to a very great extent with regard to the unequal pressure of the Land Tax. An experience of thirty years has convinced most owners of property of the anomalies created by the Redemption Acts, and the knowledge that this tax was declared perpetual has induced a belief that every grievance relating to its assessment and collection is without remedy or relief. As regards the comparative inequalities existing in the assessments between particular counties or districts, this notion is undoubtedly correct, but not so with respect to unequal assessments in the same county, district, parish or place.

"The statute 38 Geo. 3, c. 5, directed that the commissioners appointed by it, in settling the respective quotas, should be governed by the assessments made in pursuance of the statute of William and Mary, and that no alteration should take place in the assessments enumerated in the act, nor in those settled by the commissioners upon particular parishes or places; but, by the 84th section of the same act, it is also provided that if any person shall on complaint to the commissioners of land tax in the manner directed by the act, make it appear to three of such commissioners, that his assessment exceeds the equal pound rate that ought to be charged on him, then the major part of the commissioners there present may lessen the assessment so much as it exceeds the equal rate that ought to be charged on him, and cause the money so abated to be assessed and levied in such way as they think fit within the whole hundred, division, &c., or if any particular part of the same, or any person therein is underrated, then the money so abated shall be raised on such particular part or person.

"Besides the remedy provided by the above section, two other statutes have been recently

passed for rendering as consistent as circumstances will permit the laws now in force respecting this tax, the one 1st & 2nd Wm. 4, c. 21, having been framed for the purpose of relieving persons from the payment of a double land tax, and the other 1 & 2 Vict. c. 58, for preventing persons from being assessed and called upon to pay the land tax for the same property in two places.

"The double land tax was originally introduced by a special enactment in the statute of 3 & 4 Wm. & Mary, c. 1, for levying double land tax upon Papists, from which all persons were intended to be relieved by the 34th Geo. 3, c. 8; but owing to the irregularities constantly prevailing with regard to the collection of this tax, the relief was only partially applied, and the 1st & 2nd W. 4, c. 21, was therefore passed for the purpose of removing any doubt that might have existed as to the intended operation of the 34 Geo. 3, c. 8, and to give more effectual powers to those who might still continue assessed to this double land tax for having their assessment rectified.

"The first of these two acts, 1st & 2d W. 4, c. 21, after reciting that by reason of the provisions of the acts for making the land tax perpetual, subject to annual assessment, in respect of the proportions unredeemed, doubts had arisen whether the power of relief granted by the acts in and prior to 1798, by application to the Court of Exchequer, were then in force; and that difficulties had also arisen with regard to the manner and form of obtaining relief from double land tax, by reason of the great variation and increase in the annual value of lands, and of the proportions of land tax which had been redeemed or exonerated from assessment, —enacts, that in all cases of assessment for any year commencing, where any manors, lands, tenements, &c., which shall have a proportion to raise by virtue of the 38 Geo. 3, c. 5, shall be charged with a double rate by the valuation of the same manors, &c., for the former aid of 4s. in the pound, which was made in pursuance of the act of the 4th Wm. & Mary, c. 1, it shall be lawful for the commissioners of the land tax for the respective counties, districts, or divisions, where any such manors, &c., are situate, or any two or more of them, upon complaint thereof before them being first made, by or on the behalf of the owner or occupier of such manors, &c., to examine into the matter of such complaint, and, upon being satisfied, (in the manner prescribed by the act), that such manors, &c., are charged with or assessed to, the same sums as they were charged with or assessed to, previous to, or in the said 34th year of the reign of King Geo. 3d, to certify, in writing, under their hands, to the Lords of the Treasury, the names of such owner or occupier, and the amount of the overcharge on such owner or occupier; and on the certificate of the said commissioners, attested by their clerk, in the form set forth in the act, being transmitted to the commissioners for the affairs of taxes, such Commissioners, or the Lords of the Treasury, are authorized to empower the commissioners of the district to which such

certificate shall relate, to discharge such sum or sums of money so certified, or such part thereof as shall appear to be double land tax, from all future assessments. But it is also declared, that the relief granted by the acts shall not extend to double land tax charged on any manors, messuages, &c., purchased by any person or persons for a valuable consideration, subject to such double land tax as a charge, or incumbrance on such estate, nor any part thereof; nor shall any person or persons claiming under such a purchase title, be entitled to claim the benefit of the act; and that no discharge of the double land tax from any assessment for any current year shall be granted, unless such certificate as before mentioned be transmitted to the commissioners for the affairs of taxes on or before the 10th of October in such year.

"The second section gives a power of appeal to the Court of Exchequer against the decision of the commissioners, if the party shall be dissatisfied, first having given ten days notice at least, of his, her, or their intention so to do, to the Commissioners of the district to which such certificate shall relate, or to the commissioners for the affairs of taxes, or their solicitor, in any case where the intended application to the Court shall relate to the determination of the Lords of the Treasury.

By the 1st & 2d Vict. c. 58, it is enacted, that upon application to the Court of Exchequer, made by or on the behalf of any owner or occupier of any lands, tenements, or hereditaments, by affidavit or otherwise, shewing that by reason of some doubt or dispute as to the division, parish, or place in which, or in aid of which, such lands tenements, or hereditaments, are legally liable to be assessed to the land tax, the same, or any person or persons in respect thereof, have or hath been assessed, rated, or charged to the several assessments made for two or more divisions, parishes or place, and that such application is not made with a view to delay the payment of the land tax which may be legally assessed, or charged upon, or in respect of such lands &c.; and that the party by whom, or on whose behalf such application is made, is ready to bring into court, or to pay or dispose of, in such manner as the court may order or direct the sum or sums assessed or charged by the said several assessments, or either of them; it shall be lawful for the Court to make rules and orders calling upon the respective commissioners of land tax, acting for the several divisions, parishes, or places, in or for which the said several assessments shall have been made, to appear and maintain the said assessments, or to relinquish the same respectively, so far as the same relate to the lands, tenements, or hereditaments in question; and, in the meantime, to stay all proceeding by distress or otherwise against the party assessed or charged in respect of such lands, &c., for the levying, or compelling payment of the sum or sums so assessed as aforesaid; and that it shall also be lawful for the Court, if it shall think proper, to order the party by whom, or on whose behalf such application shall be

made, to pay into court the sum or sums assessed, or any part thereof, to abide the determination of the dispute, or to be disposed of as the court may direct; and that for determining the question or questions in dispute, it shall be lawful for the court to order the trial of one or more feigned issue or issues, and, also to direct who shall be the plaintiff or defendant on such trial, or otherwise to dispose of the question or questions in dispute, and determine the same in a summary manner, and to make such other rules and orders therein as may appear to be just and reasonable.

"Power is also given by this act to the court of Exchequer to order the Commissioners of land tax in whose district such question shall have arisen to pay to the applicant the costs of his application and incidental thereto, and also to refund to him the amount which he shall have been improperly required to pay.

"By the enactments just referred to, very important remedies are given in the cases to which they are applicable, and it, therefore, behoves every person who conceives himself to be excessively rated to this tax, first, to ascertain whether he is required to contribute more in proportion than others assessed to it in the same district, and, if this appear to be the case, then to inquire whether the excessive charge arises from his being doubly rated, or twice rated, or from his property being valued at too high a rate, in either of which cases, a very simple and easy mode of obtaining relief is open to him under the foregoing acts. In order, however, that his proceedings may be perfectly regular, it is necessary for him also to ascertain that no alteration has taken place in the mode of assessing the land tax for the part where the assessment intended to be complained of is made, for, by the 4th & 5th W. 4, c. 60, the commissioners are empowered, at a general meeting or meetings, for any county, riding, or shire, to transfer the jurisdiction of any of the parishes, townships, or places, in any county, from the division or divisions to which the same respectively belong, together with the quotas payable by them respectively at the time of such transfer, to any adjoining, or other division or divisions of the same county, or to any new division or divisions, which the commissioners are also authorised by the same act to create in any such county. But this caution will be unnecessary if his property is situated in any city, borough, town, or place for which a separate and distinct quota of land tax is provided by the act of 38 Geo 3, c. 5, the commissioners' power of transferring their jurisdiction not being extended to any such places.

"The act of 4 & 5 Wm. 4, c. 60, also directs that, where inclosures of waste lands and common fields have taken place, allotments and pieces of lands which have been part and parcel of any such open fields, &c., shall be rated and assessed to the land tax in such manner and in such parishes, &c., as the same have been, since the allotment and inclosure thereof, although they may not be in the parishes, &c., in which the same have been, or may be rated

or assessed : and there is still another important remedy deserving of attention.

"It will be seen by the evidence of Mr. Wood that so long as the quota upon each district finds its way into the Exchequer, no attention is paid by the government as to the mode in which it may be raised. The collectors in many parts, availing themselves of the general latitude thus appearing to have been allowed in the collection of this tax, have in several instances neglected to hand over the amounts of the quotas for which their respective districts have been assessed with any degree of regularity, sometimes retaining a considerable portion of the sums assessed in their hands, and at other times neglecting to receive the sums rated at all, so that those individuals, in particular parishes and places, who have been in the habit of paying the several sums from time to time assessed upon them, have frequently paid more than would have been sufficient to make up the quotas fixed upon their respective parishes or places, had the collection proceeded according to the spirit and intention of the act of 38 Geo. 3, c. 5.

"To prevent the continuance of this evil the act of 6 Geo. 4, c. 32, was passed, by which it is enacted, that the collector, or collectors, appointed to collect any assessment for any parish, township, or place, when required so to do by the churchwardens and overseers, or guardians of the poor, or any two of them, or by any person or persons, authorized by the inhabitants of any such parish, township or place, in vestry assembled, shall deliver to them, respectively, an account in writing of the sums collected or received by such collector or collectors, for or on account of any such assessment, and of the sums in arrear, and of the sums remaining in his or their hands, and also of the sums paid to the receiver general; and if any collector shall refuse or neglect to do so within fourteen days after such demand shall be made, *he shall forfeit the sum of 20l.*

This provision is the more important, because, by the 1st and 2nd sections of the same act, it is declared that, if it shall appear on examining the accounts for any particular city, borough, town, parish, ward, or place, that, more than the amount of the quota fixed upon such city, borough, &c., has been raised, the excess on the collection of any former years shall be applied in part payment and discharge of any assessment of the land tax made or to be made on such city, borough, town, parish, ward, or place, for any subsequent year or years.

A new duty may be considered as imposed upon the public officers specified in the last act to examine the land tax accounts for their respective parishes; but, as the provisions of the act have already in some cases proved beneficial, the additional trouble arising therefrom will not, it is conceived, be objected to.

## GRIEVANCES OF CREDITORS.— COUNTY COURTS BILL.

ON Thursday, the 13th of June instant, Mr. Grote presented to the House of Commons a petition from a respectable solicitor in the city, containing the following statements :—

"That your petitioner, in the course of his professional practice, is frequently engaged by merchants, traders, and others of the city of London, to recover debts due to them on bills of exchange, promissory notes, and bonds :

"That it is too often the practice in the profession, and has lately increased to a great extent, to resist (for the purpose of delay or vexation) actions brought to recover such debts by pleas of denial of handwriting, thereby driving the plaintiff to a trial and proof of hand-writing very often attended with great expence, varying from 50*l.* to upwards of 100*l.*, by (oft-times) bringing witnesses from a great distance to give evidence of such hand-writing :

"That although the Abolition of Imprisonment for Debt Act provides a punishment for such vexatious defences, such provision is rendered almost nugatory against a country defendant, as it compels a plaintiff to appear with his witnesses in person to oppose such defendant's discharge by the Insolvent Court; adding to his already galling expences those of travelling with his witnesses a great distance for the purpose, rather than do which a plaintiff too often suffers the gross and vexatious frauds of such sham defences to remain unpunished :

"That in the Bill for Abolishing Imprisonment for debt, sufficient provision is not made for the punishment of fraud; nor is adequate remedy given against the goods of a defendant, it being still in the power of a sheriff's officer to keep a plaintiff out of his money during the whole of the long vacation (namely, from June to November), by returning that the defendant's goods remain in his hands for want of buyers. The only writ the plaintiff can issue to compel a sale of such goods, "*the venditioni exponas*," not being returnable until November :

"That many of such pleas are put in by the attorneys of defendants without their knowledge, and upon mere instructions to delay the matter, without being aware of the expence it entails upon plaintiffs :

"That the *County Courts Bill*, lately introduced into Parliament by the Attorney General, will have the effect of driving plaintiff creditors all over the country to try cases in which sham pleas have been put in by defendants :

"That all the recent enactments upon the law of debtor and creditor are manifestly for the advantage of the former, and tend to the injury of the latter :

"That much of the evil would be remedied by requiring defendants to verify such pleas by affidavits (as in certain cases of pleas in abatement), by allowing London creditors to oppose

country insolvents by affidavit, and by compelling sheriffs to return all writs within a reasonable time, whether in term or vacation :

The petition then prayed that the allegations contained in it might be referred to the "Abolition of Imprisonment for Debt Bill" Committee; but the functions of that Committee having ceased before the petition was presented, it was ordered to lay on the table.

We observe that the Common Council of the city of London are taking measures to oppose the *County Courts Bill*, on account of its compelling the citizens to follow their debtors into district Courts all over the kingdom.

Mr. Lott, one of the members, in introducing a motion to the notice of the Court of Common Council, expressed his regret that in all bills brought into parliament professing to amend the law of debtor and creditor, the rights and interests of the latter were sacrificed to some vague notions of protecting popular rights and liberties attaching to the former. The bill should be entitled "*A Bill for affording facilities to Resistance of Actions by Defendants*;" and the preamble should recite that "*they were an ill-used set of persons, and grievously oppressed by plaintiffs.*"

Mr. Lott concluded by moving a reference to the Secondaries' Committee; that committee being actively engaged in a reference to consolidate all the City Courts into one efficient good working Court of justice.

Mr. Richard Taylor seconded the motion. He stated that the bill, if passed, would afford assistance to individuals to victimize London-tradesmen, by obtaining their goods, and defying them with the terror of expence of a trial in distant parts.

The motion was carried unanimously.

#### POWER OF RAILWAY COMPANY TO ABANDON PART OF THEIR UNDERTAKING.

THE following is the judgment of the Court of Queen's Bench on this important subject, delivered on Friday, 21st June, 1839, in *The Queen v. The Eastern Counties Railway Company* :—

Lord Chief Justice Denman, said—This was an application for a *mandamus* to do certain acts therein specified, and it is observed on both sides, in the course of the discussion, and we think with truth, that the questions involved in it are of much novelty and of at least equal importance, because as on the one hand much mischief may ensue if this Court should improvidently enjoin the performance of things impracticable or improper, so on the other is there no higher duty cast upon this Court than to exercise a vigilant controul over persons entrusted with large and extensive powers for public purposes, and to enforce within reasonable bounds the execution of such purposes in compliance with such powers, and the more

so as we are not aware of any other efficient remedy.

The principles upon which these powers are conferred by the legislature upon undertakings of this description are now so fully understood, that it is not needful to do more than generally to refer to them. They are thus laid down by Lord Eldon in the well-known case of *Blakemore and The Glamorganshire Canal Company*—"I apprehend those who come for these acts to Parliament do in fact undertake that they shall do and submit to whatever the legislature empowers or compels them to do, and that they shall do nothing else, that they shall do and forbear all that they are thereby required to do and forbear, as well with reference to the interests of the public, as to the interest of individuals." The same doctrine was acted upon by this Court in its fullest extent in the case of *Rea v. Cumberworth*, 3 B. & Ad. 108. It remains only to add that these cases and principles have been recently recognized by the Court of Exchequer in the case of *Lee and Milner*, 2 Mee. & Wel. 824. The reasons also which regulate the practice of this Court in regard to writs of *mandamus* are very plain and intelligible. This interference is occasioned by inferior Courts or persons refusing to proceed in some cases prescribed by law, and not in consequence of any misapprehension or error in their course, provided they have entered upon it; and accordingly, if it had appeared that the company were substantially complying with the terms of their undertaking, there would have been at once a satisfactory answer to the application. Now the objects and purposes for which the company have been incorporated and empowered, or in the words of the passage cited, which "the legislature has empowered and compelled them to do and to submit to," are too clear to admit of any doubt. The title of the act is "for making a railway from London to Norwich and Yarmouth," and the preamble recites that "the opening of an additional certain and expeditious communication, not only between the towns there particularly enumerated, but also between the metropolis and the eastern districts of the kingdom, would be of great public advantage," the eastern terminus being a sea port of greater consequence than any in the eastern districts. The act then gives a minute description of the whole line, and a particular enumeration of all the places through which it is to pass, so that all question on this matter is entirely precluded. We consider it to be equally undeniable that to carry the railroad through a portion only of the prescribed line, such as a third or a half, is a nominal and not a real compliance with the meaning of the act of parliament. We are aware that we were met in this part of the argument by remarks upon the difficulties or impossibility attending the execution according to the prescribed terms. We confess, however, that we should have felt more pressed by observations of this nature, if we had not observed in the preamble of the act, which we must consider to have been

proved, that certain persons therein named, (and we consider the obligation as extending to their successors, who from time to time may constitute the company) were willing at their own costs and charges to carry the said undertaking into execution. Such difficulties, be they more or less, should have been duly estimated before the undertakers pledged themselves to the execution, for the sake of obtaining such large and extensive powers as most certainly are vested in them for the purposes already mentioned. It was objected also that the time for completing the work is not quite elapsed, and the time for determining the line has not yet arrived. We were also referred to parts of the act, and particularly to the clause vesting the land taken for the line in the proprietors on each side, as indicating that the non-completion of the work was obviously within the contemplation of the legislature. We think, however, that a failure of the enterprise upon experiment and trial, which may of course happen to any scheme, however plausible or promising, is widely different from a design to abandon one part of the line, and to execute another, which it may be found more easy and profitable to accomplish. We now come to consider whether, as far as appears to us, there would be a *bond fide* purpose of completing the work. And upon this part of the case, after making every allowance for the discretion to be exercised by the company as to the different degrees of exertion to be made in different parts of the line, it is impossible not to be forcibly struck by the different state of things beyond Colchester, and between that town and London. Beyond, we can discover no activity, whereas, between London and Colchester, we are given to understand that the whole line is in a state of great forwardness. The procuring land for the line is usually, we believe, as reasonably might be expected, the first step in this course; and yet in that preliminary measure the preparation beyond Colchester we presume to be comparatively small and insignificant. Moreover, when we consider how indispensable for purposes of this description is the compulsory power of procuring land, because without that the obstinacy or caprice of a single individual may put a stop to the work at once, we cannot help thinking that the answer of the company to a request that they would set out and define their line, deviating from the line laid down in the plans (a mere precautionary measure to secure compulsory purchases), that no deviation is requisite, is much more consistent with a determination not to proceed, than with a well founded belief that the original plan could have been laid down with such perfect accuracy as in working to require no deviation at all. Another argument against our interference was drawn from the power given to general meetings of the company to decide upon the expediency of all measures to be adopted for executing the act of parliament; but we must consider the real nature of this application. It is not a complaint by a majority of the proprietors against the governing

body, but by a minority against the conduct of the company itself, which they charge substantially with a breach of faith towards them, by stopping short of a *bond fide* execution of that purpose which induced them to become subscribers. They strongly urge upon us the consideration, that all the sacrifices which they may have made in furtherance of their own interests may go unrequited, or even may entail upon them additional loss by giving advantages to others in which they cannot share. To say that a majority of the whole body are satisfied with the dividends they are likely to receive and are unwilling to risk more expenditure is obviously no answer to them or to the public, who created these great powers for different purposes, or to Parliament which was induced to grant them by the promise of public benefits much more extensively diffused.

Upon the whole, without coming to any final decision, we think the case is involved in sufficient doubt to require a return to the *mandamus*, and that the writ should go for that purpose.

## COURT OF EXCHEQUER GENERAL ORDERS IN EQUITY.

[Concluded from page 139.]

### FORMS OF WRITS.

No. 4.—*Writ of Fieri Facias, on a Decree or Order of the Court of Exchequer for Payment of Money, Interest, and Costs.*

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the faith.

To the Sheriff of \_\_\_\_\_ greeting:

We command you that of the goods and chattels of *C. D.* in your bailiwick you cause to be made the sum of £ \_\_\_\_\_, and also interest thereon at the rate of 4l. per centum per annum, from the day of \_\_\_\_\_, which said sum of money and interest were lately before us in our Court of Exchequer at Westminster, in a certain cause, or certain causes (*as the case may be*), wherein *A. B.* is plaintiff, and *C. D.* is defendant, or in a certain matter there depending, intituled, "in the matter of *E. F.*" (*as the case may be*), by a decree or order (*as the case may be*) of our said Court, bearing date the day of \_\_\_\_\_, decreed or ordered (*as the case may be*) to be paid by the said *C. D.* to *A. B.*, together with certain costs in the said order mentioned, and which costs have been taxed and allowed by *G. H.* esquire, one of the Masters of our said Court, at the sum of £ \_\_\_\_\_, as appears by the certificate of the said Master, dated the day of \_\_\_\_\_, and that of the goods and chattels of the said *C. D.* in your bailiwick you further cause to be made the said sum of £ \_\_\_\_\_, together with interest thereon at the rate aforesaid, from the day of \_\_\_\_\_, and that you have that

<sup>a</sup> The day mentioned in the order.

<sup>b</sup> The date of the Master's certificate of taxation, or, if that were prior to the 1st October, 1838, say, "from the 1st day of October, 1838."

others are defendants, or in a certain matter there depending, intituled, "In the matter of *E. F.*" (*as the case may be*) by a decree or order (*as the case may be*) of our said court, made in the said cause or matter (*as the case may be*) and bearing date the            day of            it was decreed and ordered, or ordered (*as the case may be*) that the said *C. D.* should pay unto *A. B.* the sum of £            (*if interest be given by the Order, say* "together with interest thereon after the rate of 4l. per centum per annum, from the day of            ") And afterwards, the said

*A. B.* came into our said Court of Exchequer, and according to the form of the statute in such case made and provided, chose to be delivered to him, her, or them (*as the case may be*) all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough; and also all such lands, tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of copyhold or customary tenure in your bailiwick, as the said *C. D.* or any one in trust for him, was seised or possessed of on the      day of

in the year of our Lord 1801 or at any time afterwards, or over which the said *C. D.* on the said day of 1801 or at any time afterwards had any disposing power, which he might, without the assent of any other person exercise for his own benefit, to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents and hereditaments, respectively, according to the nature and tenure thereof, to him and to his assigns until the said

sum of £ , together with interest thereon, at the rate of 4*l.* per centum per annum, from the said day of shall have been levied. Therefore we command you that, without delay you cause to be delivered to the said *A. B.* by a reasonable price and extent, all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough; and also all such lands, tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said *C. D.*, or any person in trust for him was seized or possessed of on the said day of

or at any time afterwards, or over which the said *C. D.* on the said day of or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said *A. B.* as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said

1 The day on which the decree or order was made.

\* If the order be for money and interest, the day mentioned in the order. If for money only, the day on which the decree or order was made, or in case it was made prior to the 1st day of October, 1838, say "from the 1st day of October 1838."

<sup>1</sup> The date of the Master's certificate, or if that were prior to the first October 1838, say "from the 1st Day of October, 1838."

sum of £ , together with interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ, make appear to us in our Court of Exchequer aforesaid immediately after the execution thereof, under your seal and the seals of those by whose oath you shall make the said extent and appraisement. And have there then this writ. Witness James Lord Abinger, at Westminster, &c.

**No. 7.—Writ of Elegit on a decree or order of the Court of Exchequer for payment of Costs.**

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the faith.

To the Sheriff of greeting:

Whereas, lately in our Court of Exchequer at Westminster, in a certain cause or certain causes (as the case may be,) there depending, wherein A. B. and others are plaintiffs, and C. D. and others are defendants, or in a certain matter there depending, intituled, "In the matter of E. F." (as the case may be,) by a decree or order (as the case may be) of our said Court, made in the said cause or matter (as the case may be) and bearing date the day of , it was decreed and ordered, or ordered (as the case may be,) that C. D. should pay unto A. B. certain costs as in the said decree, or order (as the case may be,) mentioned, and which costs have been taxed and allowed by G. H. esquire, one of the Masters of our said Court, at the sum of £ , as appears by the certificate of the said master, dated the day of . And afterwards the said A. B. came into our said Court of Exchequer, and according to the form of the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said C. D., or any one in trust for him, was seised or possessed of, on the day of , in the year of our Lord ,<sup>m</sup> or at any time afterwards, or over which the said C. D. on the said day of ,<sup>m</sup> or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit; to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said sum of £ , together with interest thereon at the rate of 4l. per centum per annum, from the said day of ,<sup>n</sup> shall have been levied. There-

fore we command you, that without delay, you cause to be delivered to the said A. B. by a reasonable price and extent, all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all such lands and tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of copyhold, or customary tenure, in your bailiwick, as the said C. D. or any person or persons in trust for him, was or were seised or possessed of, on the said day of ,<sup>o</sup> or at any time afterwards, or over which the said C. D. on the said day of ,<sup>o</sup> or at any time afterwards had any disposing power, which he might without the assent of any other person or persons, exercise for his own benefit; to hold the said goods and chattels to the said A. B. as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said sum of £ , together with interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ, make appear to us in our Court of Exchequer aforesaid, immediately after the execution thereof, under your seal and the seals of those by whose oath you shall make the said extent and appraisement. And have there then this writ.

Witness, &c., at Westminster.

**No. 8.—Writ of Elegit on a Decree or Order of the Court of Exchequer, for payment of money and costs.**

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, defender of the faith.

To the Sheriff of greeting:

Whereas, lately in our Court of Exchequer at Westminster, in a certain cause or certain causes (as the case may be) there depending, wherein A. B. and others are plaintiffs, and C. D. and others are defendants, or in a certain matter there depending, intituled "In the matter of E. F." (as the case may be) by a decree or order (as the case may be) of our said court, made in the said cause or matter (as the case may be), and bearing date the day of , it was decreed and ordered, or ordered (as the case may be) that C. D. should pay unto A. B. the sum of £ , together with certain costs as in the said decree or order (as the case may be) mentioned, and which costs have been taxed and allowed by G. H. esquire, one of the masters of our said court, at the sum of £ . as appears by the certificate of the said Master dated the day of . And afterwards the said A. B. came into our said Court of Exchequer, and according to the form of the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and

<sup>m</sup> The date of the Master's certificate of taxation.

<sup>n</sup> The date of the Master's certificate of taxation, or if that were prior to the 1st day of October, 1838, say "from the 1st day of October, 1838."

<sup>o</sup> The date of the Master's certificate of taxation.

hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said *C. D.*, or any one in trust for him, was seised or possessed of, on the day of , in the year of our Lord , or at any time afterwards, or over which the said *C. D.*, on the said day of , or at any time afterwards, had any disposing power, which he might, without the assent of any other person exercise for his own benefit; to hold to him the said goods and chattels, as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said two several sums of £ and £ , together with interest upon the said sum of £ at the rate of 4l. per centum per annum, from the day of ,<sup>a</sup> and on the said sum of £ at the rate aforesaid, from the day of ,<sup>a</sup> shall have been levied. Therefore we command you that without delay you cause to be delivered to the said *A. B.* by a reasonable price and extent, all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands and tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said *C. D.* or any person or persons in trust for him, was or were seised or possessed of, on the said day of ,<sup>a</sup> or at any time afterwards, or over which the said *C. D.* on the said day of ,<sup>a</sup> or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said *A. B.* as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said two several sums of £ and £ , together with interest aforesaid, shall have been levied. And in what manner you shall have executed this our writ, make appear to us in our Court of Exchequer aforesaid immediately after the execution thereof, under your seal and the seals of those by whose oath you shall make the said extent and appraisement. And have there then this writ. Witness, James Lord Abinger, at Westminster, &c.

<sup>a</sup> The day on which the decree or order was made.

<sup>a</sup> The day on which the decree or order was made, or in case it was made prior to the 1st of October, 1838, say "from the 1st day of October, 1838."

<sup>a</sup> The date of the Master's certificate of taxation, or if that were prior to the 1st day of October, 1838, say "from the 1st day of October, 1838."

<sup>a</sup> The day on which the decree or order was made.

No. 9. Writ of Elegit on a Decree or Order of the Court of Exchequer for payment of Money, Interest, and Costs.

VICTORIA, by the grace of God of the united Kingdom of great Britain and Ireland, Queen, Defender of the Faith.

To the Sheriff of greeting :

Whereas, lately in our Court of Exchequer at Westminster, in a certain cause or certain causes (as the case may be) there depending, wherein *A. B.* and others are plaintiffs, and *C. D.* and others are defendants, or in a certain matter there depending, intituled, "In the matter of *E. F.*" (as the case may be) by a decree or order (as the case may be) of our said Court, made in the said cause or matter (as the case may be) and bearing date the day of , it was ordered and decreed, or ordered (as the case may be) that *C. D.* should pay unto *A. B.* the sum of £ , together with interest thereon, after the rate of 4l. per centum per annum, from the day of , together also with certain costs, as in the said decree or order (as the case may be) mentioned, and which costs have been taxed and allowed by *G. H.* esquire, one of the Masters of our said Court, at the sum of £ , as appears by the certificate of the said Master, dated the day of : And afterwards the said *A. B.* came into our said Court of Exchequer, and according to the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of copyhold or customary tenure in your bailiwick as the said *C. D.* or any one in trust for him was seised or possessed of on the day of , in the year of our Lord ,<sup>a</sup> or at any time afterwards, or over which the said *C. D.* on the said day of ,<sup>a</sup> or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit. To hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said two several sums of £ and £ , together with interest, upon the said sum of £ , at the rate of 4l. per centum per annum, from the said day of ,<sup>b</sup> and on the said sum of £ , at the rate aforesaid from the day of ,<sup>c</sup> shall have been levied. Therefore we command you, that without delay you cause to be delivered to the said *A. B.*, by a reasonable price and extent, all the goods and chattels of the said *C. D.* in your bailiwick,

<sup>a</sup> The day on which the decree or order was made.

<sup>b</sup> The day mentioned in the decree or order.

<sup>c</sup> The date of the Master's certificate of taxation, or if that were prior to the 1st of October, 1838, say "from the 1st day of October, 1838."



except his oxen and beasts of the plough, and also all such lands and tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of copyhold or customary tenure in your bailiwick, as the said *C. D.* or any person or persons in trust for him, was or were seised or possessed of on the said day of <sup>a</sup> or at any time afterwards, or over which the said *C. D.* on the said day of <sup>a</sup> or at any time afterwards had any disposing power, which he might, without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said *A. B.* as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents and hereditaments, respectively according to the nature and tenure thereof to him and to his assigns, until the said two several sums of £ , and £ , together with interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ, make appear to us in our Court of Exchequer aforesaid, immediately after the execution thereof, under your seal and the seals of those by whose oath you shall make the said extent and appraisement. And have there then this writ.

Witness &c. at Westminster, &c.

#### No. 10. *Writ of Venditioni Exponas.*

VICTORIA, by the grace of God of the United Kingdom of great Britain and Ireland, Queen, defender of the faith.

To the Sheriff of greeting.

Whereas by our writ we lately commanded you that of the goods and chattels of *C. D.* (*here recite the Fieri Facias to the end*) and on the day of , you returned to us in our Court of Exchequer aforesaid, that by virtue of the said writ to you directed, you had taken goods and chattels of the said *C. D.* to the value of the money and interest aforesaid, which said goods and chattels remained in your hands unsold for want of buyers. Therefore we being desirous that the said *A. B.* should be satisfied his money and interest aforesaid, command you, that you expose to sale and sell or cause to be sold the goods and chattels of the said *C. D.* by you in form aforesaid taken, and every part thereof, for the best price that can be gotten for the same, and have the money arising from such sale before us in our said Court of Exchequer aforesaid, immediately after the execution hereof to be paid to the said *A. B.* And have there then this writ.

Witness, James Lord Abinger, at Westminster, &c.

(Signed) { ABINGER.  
J. PARKE.  
E. H. ALDERSON.  
J. GURNEY.  
W. H. MAULE.

<sup>a</sup> The day on which the decree or order was made.

## SUPERIOR COURTS.

### Vice Chancellor's Court.

#### CHARITY.—JURISDICTION.

*The Court has no jurisdiction, on petition, to order funds, subscribed for supporting one charity, to be transferred to another.*

*Quære whether it has such jurisdiction even upon information, if opposed by any of the parties contributing to the charity.*

A dispensary was established at Reading by voluntary contribution in the year 1802, under the following regulations:—A contributor of ten guineas was to be a life governor, a subscriber of one guinea, annually, was to be a governor; and a subscriber of half a guinea, annually, was entitled to put one patient on the books. The governors were empowered to make, alter, or rescind rules and regulations, elect or remove officers or physicians, or surgeons, or make any order affecting the funds of the charity only at a general meeting, of which notice should be given in the Reading newspaper, stating the object of the meeting; and the management of the institution was to be left in the hands of a president, three vice-presidents, a treasurer and a committee of six, three of whom should form a *quorum*, and they should inspect the accounts, report the state of the dispensary, and the number of patients received in the year, and produce the same at the annual general meeting. The funds of the dispensary had in the course of time accumulated to a considerable amount. The Rev. Mr. Woodroffe had bequeathed to the institution 1,500*l.*, the half of which to be laid out in a building. His residuary legatee had confirmed the gift, so as to take it out of the statutes of mortmain, and a house had been purchased for the use of the dispensary. Besides the house, the dispensary was possessed of 3,250*l.* three per cents, and 2,100*l.* reduced annuities, in the names of trustees. About the latter end of 1835 the increased amount of the funds and the great number of accidents on the Great Western Railway, induced the governors to try whether the benefits of the dispensary might not be more widely extended, by converting it into an hospital or infirmary for in-patients among the poor of Reading and its neighbourhood. A general meeting of the subscribers was called, a report was directed, and a meeting held to consider the report, which recommended the erection of a county or town hospital, and that 1,000*l.* should be voted towards its erection out of the funds of the dispensary, and that the remainder of the funds should be appropriated towards the annual expenditure of such an establishment, and that an application should be made to the grand jury of the county for its assistance, and that a county meeting should be convened for the same purpose. The report was adopted, and the grand jury upon being applied to, came to a resolution approving of the proposition, and a county meeting was held in April 1836, at which it was resolved that an hospital should be established in the vicinity of Reading, that the purchase of the ground and

the support of the establishment should be provided for by voluntary contributions. Very large benefactions and subscriptions were received from the noblemen and gentlemen of the county, and the hospital, called the "Royal Berkshire Hospital," was erected. Under these circumstances, a great majority of the governors and subscribers to the dispensary were desirous that its funds should be transferred to the use of the hospital. Various meetings were held for that purpose, at one of which it was agreed that the physicians and surgeons to the dispensary should be appointed to the same situation in the hospital, in case they were willing to accept the same. And it was also resolved that donors of fifteen guineas or annual subscribers of one guinea, should be entitled to have one out-patient on the books, and that the present life governors of the dispensary should be entitled to the privileges of annual subscribers to the hospital, and the annual subscribers of the dispensary, whose term of subscription had not expired when that institution should be united to the hospital, should have the privilege of recommending one out-patient during the remainder of their term. In January last a resolution was come to, at a meeting of the dispensary subscribers that, in consequence of the establishment of the hospital, it was no longer desirable to keep on foot the dispensary as a separate institution, and that their subscriptions should be discontinued or transferred to the hospital, and an application, if necessary, should be made to this court for its sanction. A petition was accordingly presented by Lord Braybrook, the mayor of Reading, and others, the president, the vice president, treasurer and sub-committee of the dispensary of Reading, praying that the trustees of the dispensary might be authorized by the court to transfer the funds and property of the dispensary to the hospital, or for a reference to the master whether such transfer would be proper.

Mr. Jacob, in support of the petition, stated the above mentioned facts, and expressed his hope, that there was no objection to the reference as prayed for. The petition was not served on any of the parties interested, because they were nearly unanimous in the transfer.

Mr. Knight Bruce, with whom were Mr. Wigram and Mr. Shurpe, said, he appeared to oppose the petition on behalf of Mr. Vines, a solicitor of Reading, and a subscriber to the Dispensary, on whom the petition had been served.

Mr. Jacob said that Mr. Vines, who was one of the few objectors, had been given a copy of the petition before it had received the Lord Chancellor's fiat. He had not, therefore, been served so as to entitle him to appear in Court.

Mr. Knight Bruce said it must be observed, then, the petition was heard *ex parte*.

The Vice Chancellor observed, that he would not say, if an information was filed, the Court might not do what was asked by the petition; but even if an information were filed, the Court would pause before it made such an order. The Court would be very cautious to do any-

thing which might prevent the raising of contributions from time to time for voluntary institutions. From the mode in which these voluntary institutions were conducted, every body knew that persons were inclined to support them from the sort of influence they obtain by having a share in their management. It was notorious from what had taken place in other institutions of the kind, that this sort of idea tended to keep them up. His Honour then contrasted the rules for subscribers to the hospital, with those relating to the dispensary. If it was in the power of the Court at any time to put an end to a dispensary, by amalgamating it with an hospital, the motion would very much tend to check the formation of similar institutions, so that even if an information were filed, he did not think he would make the order. On Sir Samuel Romilly's act, he had no jurisdiction to do what had been asked. A great deal was said when that act was passed, as to whether it had any application to a case where the conduct of trustees was under consideration, and whether it was not confined to the case, where it was necessary to make some order as to the administration of the funds; but here the Court was asked to make such an order as would put an end to the charity. He did not think the powers of the governors in the rules mentioned authorised them to do such an act. They had power to make orders respecting the general management of the charity, but it was never intended the order should extend to enable them so to affect the funds of the charity as to render it impossible for them to carry on the original institution, and as to the powers of management, it is quite plain they meant the management of an existing institution. No complaint was now made of the society as an existing society; it was an application to put an end to the dispensary by amalgamating it with the hospital. If the Court saw it had no jurisdiction, it would not do so frivolous a thing as to make a reference to the master for his report, which, even if it were favourable to the petition, could not be carried into effect.

(Order refused.—*In the matter of the Reading Dispensary*, at Westminster, T. T. 1839.

#### Queen's Bench.

[Before the Four Judges.]

#### RATES.—APPEAL.—COUNTY AND BOROUGH SESSIONS.

*By the operation of the 1 Geo. 4, c. 31, an appeal against a rate imposed on the parish of Bridgewater would have lain to the quarter sessions of the county, that borough not having, according to the provisions of that statute, a sufficient number of justices in the borough sessions to decide on such appeal. By the effect of the 5 & 6 W. 4, c. 76, a part of the parish of Bridgewater was taken out of the borough. Since that act the borough has had more than the number of justices required by the 1 Geo. 4, c. 31, to decide on an appeal against a rate:*

*Held, that as before the Municipal Corporation Act the whole borough was, with respect to rates, subject to the jurisdiction of the county quarter sessions, the portion of the parish dis severed from the borough by that act continued subject to such jurisdiction, notwithstanding the increase in the number of the borough justices.*

This was a rule to shew cause why an order of sessions confirming a rate should not be quashed. It appeared that the parish of Bridgewater was now situated partly within the borough of that name and partly within the county, one portion of it having been separated from the rest under the provisions of the Municipal Corporation Act. There were four justices within the borough before the passing of that act. By the 17 Geo. 2, c. 38, s. 4, qualifying the provisions of the 43 Eliz. c. 2, s. 6, an appeal was given to any rated inhabitants of a parish situated within any borough against any rate imposed on them for the relief of the poor, and such appeal was directed (s. 5) to be made to the quarter sessions of the county in all cases where any borough within which such parish might be situated did not hold a sessions composed of at least four justices. Then came the 1 Geo. 4, c. 36, by which it was declared that such appeals must be made to the quarter sessions of the county in any case in which the borough sessions did not consist of six justices at the least. Since the passing of the Municipal Corporation Act seven justices had been assigned to Bridgewater. A rate had been made in the parish, which was objected to on several grounds, and certain parties residing in the county part of the parish entered an appeal against it at the quarter sessions of the county. The appeal was heard and the rate amended, and then confirmed as amended, subject to a question as to the jurisdiction of the county quarter sessions. This question depended on the construction to be given to the 5 & 6 W. 4, c. 76, s. 111, by which it is enacted "that no part of any borough in and for which a separate court of quarter sessions of the peace shall be holden shall be within the jurisdiction of the justices of any county from which such borough before the passing of this act was exempt."

Mr. Bore, in support of the order of sessions, contended that this enactment did not affect the borough of Bridgewater, which before the passing of the Municipal Corporation Act had been, with respect to this appeal against rates, subject to the jurisdiction of the justices of the county. Since that time it only possessed four justices, and therefore fell within the provisions of the 1 Geo. 4, c. 36. The jurisdiction which then existed as to all the borough continued now with respect to that portion of the old borough which had ceased to be part of the borough and was united to the county. If that was not so, the county portion of the parish would be without any appeal at all.

The Attorney General and Mr. Kinglake, *contrâ*.—There cannot be two jurisdictions to

try the validity of one rate. It is clear that the portion of the parish of Bridgewater which is part of the borough, must have its appeal to the borough sessions. The other portion of the parish, which is very inconsiderable, must be subject to the same appeal, if it possesses any; but it may be very much doubted whether a case like the present has been provided for in the statute, and whether this portion of the parish now cut off from the borough has not altogether lost its power of appealing against the rate.

Lord Denman, C. J.—I am of opinion that this rate was properly made the subject of appeal to the quarter sessions of the county. Those sessions had power to entertain the appeal before the passing of the Municipal Corporation Act, and I am of opinion that that act has not changed the jurisdiction.

Mr. Justice Patteson.—This case turns entirely on the construction of the 111th section of the Municipal Corporation Act. The general point, which is a curious one, does not arise in this case, namely, whether, where a parish is situated partly in a borough and partly in a county, the latter portion being entirely out of the jurisdiction of the borough, there would be any appeal whatever for that portion of the parish, respecting a rate laid on the whole parish. That may be, I rather incline to think it is, a *casus omissus* in the statute. This case has been argued as if it was one of that kind, but I do not think it is so, or that it is necessary to determine that point here, for this parish according to the statement of the case, has been within the jurisdiction of the borough magistrates, and therefore, up to the time of the 47 Geo. 2 passing, an appeal would lie for any part of the parish to the borough magistrates sitting in sessions, against a rate made for the whole parish. Then came the 17 Geo. 2, which however did not touch this case, for there were always four justices within the borough of Bridgewater, so that even under that statute an appeal would lie to them. But then came the 1 Geo. 4, which gave the right of appeal to the borough sessions only, in case there were six justices within the borough, or to the county sessions, in case there were not so many justices within the borough. Between the passing of that statute, and that of the Municipal Corporation Act, there were not six justices in the borough of Bridgewater. The jurisdiction of the borough justices was therefore expressly taken away, and that of the county justices established in its room. The Municipal Corporation Act having afterwards taken part of this parish out of the jurisdiction of the borough magistrates, both with respect to locality and to jurisdiction, the question is, whether these circumstances bring this particular parish within the consequences of the *casus omissus* I have before mentioned. It would be a very singular thing that we should say that they do, unless we were compelled to do so by the positive words of the statute, for the rule of the Courts is at all times to find, if possible, sufficient to found the right of ap-

peal. Now let us consider the 11th section. The material part of it, for the purpose of this discussion, is in these terms, "No part of any borough in and for which a separate court of quarter sessions of the peace shall be holden, shall be within the jurisdiction of the justices of any county from which such borough before the passing of this act was exempt." Then if before the passing of this act there had been six justices in the borough, of course an appeal would not have lain against the rate from that part to the county quarter sessions, and then that part which still remains within the parish, but not within the jurisdiction of the borough, could not have gone to any sessions with an appeal against a rate. But that is not so here; for, at the time of the passing of the Municipal Corporation Act the whole of the borough of Bridgewater was liable to an appeal to the county justices. I think therefore, that the clause must be taken to mean that no place shall now for the first time be brought within the jurisdiction of the county justices, but that if it was before subject to their jurisdiction that so it shall remain, no new jurisdiction having been substituted. That is to say, the clause was intended to leave things exactly as they were at the time of the passing of the statute, and as an appeal would then have been to the county quarter sessions, so it will lie to them now.

Mr. Justice *Williams*. I am entirely of the same opinion. The whole question depends on the 11th section, and I think it meant to leave things just as before.

Rule discharged. Rate confirmed.—*The Queen v. The Parish of Bridgewater*. T. T. 1899. Q. B. F. J.

#### PRACTICE.—SIDE-BAR RULES.—FEES.

*An application to set aside a side-bar rule peremptorily commanding the return of a certiorari, comes too late, if made after a rule for an attachment for disobedience has been applied for. If the conduct of the party obtaining the side-bar rule is an answer to his application, it should be brought before the Court when that rule is served.*

*If the application for an attachment for not returning a writ is to be founded on the fact of the refusal of the party applying for the writ to pay the fees due in respect of making the return, it must be shewn that he was duly informed of the nature and amount of such fees.*

In this case a rule had been obtained, calling on the prosecutor to shew cause why a side-bar rule should not be set aside. This side-bar rule had been obtained by him peremptorily commanding Mr. Baron *Alderson*, as one of the Judges of Assize for the county of York, to make a return to a writ of *certiorari* which had been directed to that learned Judge, requiring him to return into this Court the indictment of *The Queen v. Harland*. The affidavits in support of the motion stated in substance that applications had been made by

the prosecutor to Mr. Baron *Alderson* to return the indictment mentioned in the *certiorari*; that the learned Baron had referred the prosecutor to Mr. Bayley, the Clerk of Assize for the Northern Circuit; that Mr. Bayley had enquired of his deputy in Yorkshire why the return had not been made, and had been informed that every thing was ready, but that there were certain fees upon the *certiorari* which the prosecutor had refused to pay, and the return therefore was delayed till such fees should have been discharged. The affidavit disclosed in the usual manner the fact that under the recent statute these fees were payable into the Treasury, and that the officers were compelled to account for them on oath. It then went on to allege that this cause of the delay in making the return had been communicated to the prosecutor, who, however, refused to pay the fees, and had, in last Easter Term, sued out the side-bar rule, in order to compel obedience to the *certiorari*. The present rule was obtained in the early part of Trinity Term.

Mr. *Newton* appeared to shew cause against the rule, and contended that the application came too late.

Mr. *Cresswell*, in support of the rule, insisted that under the particular circumstances of this case the application was sufficiently early, the parties being in fact communicating with each other on the subject of the payment of the fees. There was no necessity for taking any steps until the side-bar rule was acted on by a motion for an attachment being founded upon it. That having been done, this rule was at once applied for.

The Court thought that the application came too late. It ought to have been made as soon as the side-bar rule was served. Besides, the affidavit in support of the application was insufficient, as it did not shew that the prosecutor was informed as to the exact nature and amount of the fees he was called on to pay.

Rule discharged.—*The Queen v. Harland*, T. T. 1839. Q. B. F. J.

#### LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

##### House of Lords.

For the Protection of Purchasers against Bankruptcy. See p. 146, *ante*.  
[For 3d. reading.]

For the regulation of the Court of Common Pleas. See p. 147, *ante*.  
[For 3d. reading.]

Belper,—Hatfield,—Halifax,—Huddersfield, and Bradford Small Debts Court Bills.

To make perpetual the 1 Vic. c. 80, for exempting certain Bills and Notes from the Usury Laws.

**House of Commons.****ADMINISTRATION OF JUSTICE.**

- To improve County Courts.  
[In Select Committee.] Lord John Russell.
- For keeping and authenticating non-parochial Registers of Births, Deaths, and Marriages.  
[In Committee.] Lord John Russell
- For regulating the Police Courts in the Metropolis.  
[In Committee.]
- For the better ordering of Prisons.  
[Passed.] Lord John Russell.
- To regulate and enlarge the Summary Jurisdiction of Justices.  
[In Committee.] Lord John Russell
- For further improving the Police in and near the Metropolis.  
[For 2d reading.] Mr. F. Maule.
- Small Debts Court Bills for the following places:—

Aberford,	Nottingham,
Bury, (Lancashire)	and
Chesterfield,	Mansfield,
Eckington,	Oldham,
Glossop,	Pontefract,
Grantham,	Rochdale,
Kingsbridge and	Rotherham,
Dodbrooke,	Tavistock,
Leeds,	Warrington,
Liskeard,	West Ham,
Liverpool,	Worksworth,
Newark.	Yorkshire.
Newton Abbot,	

- To abolish Grand Juries.  
Mr. Pryme.
- To amend the Law relating to the Custody of Infants.  
[For 3d reading.] Mr. Serjt. Talfourd.
- To amend the Imprisonment for Debt Act, as to Advertisements.  
[Passed.] The Attorney General.
- For regulating the High Court of Admiralty.  
[For 2d. reading.]

**LAWS OF PROPERTY.**

- To amend the Law of Copyright.  
[In Committee.] Mr. Serjt. Talfourd.
- For the Enfranchisement of Lands of Copyhold and Customary Tenure.  
[For 3d reading.] Mr. James Stewart.
- For securing the Benefit of Inventions in Arts and Manufactures.  
Mr. Mackinnon.

**LAW OF ELECTIONS.**

- For the registration of Parliamentary Electors.  
[In Committee.] Mr. Attorney General.
- Controverted Elections.  
[For 2d reading.] Lord Mahon.
- To amend the jurisdiction for the Trial of Election Petitions.  
[For 2d reading.] Sir R. Peel.

- For establishing a Court of Appeal from the Revising Barristers.  
[In Committee.] [Mr. C. Buller.]

- To prevent persons from losing their votes at an election by removal after the preceding Registration.  
[In Committee] Mr. Gibson.

**SHERIFFS;—HIGHWAYS;—SEWERS;—RATES;—TURNPIKES.**

- To amend the Laws relating to Highways.  
[In Committee.] Mr. Barneby.
- To alter and amend the Laws relating to Sewers.  
[In Committee.] Mr. Christopher.
- To provide for making Unions of Turnpike Trusts.  
[For 2d. reading.] [Mr. Mackinnon.]
- For relieving Poor Persons from Rates.  
[For 2d. reading.]

**EQUITY EXCHEQUER.**

- A notice of motion for return of the number of days, the Court of Exchequer, as a Court of Equity sat for the dispatch of business for ten years, ending 1838 inclusive, shewing the number of days the Court sat in each Term, and the Sittings after each Term.  
16th July. Mr. Freshfield.

**THE EDITOR'S LETTER BOX.**

We are informed that by leave of Court the following name was added to the List of Admissions in next term :

James Frederick Slade, 8, Argyle Street; articulated to Philip Goode, 44, Howland Street, Fitzroy Square: assigned to Charles Dod, 21, Craven Street, Strand.

The further letters on Attorneys Gowns have been received.

We should recommend "A Student at Law" to consult Mr. Ram's work on Assets.

We think X. P. Y. should shew some stronger grounds than appear in his letter for altering the *power* of taxing solicitor's bills. The *mode* of taxing may in some cases be objectionable, and our correspondent should apply himself to the consideration of a remedy.

We have been obliged to abandon the insertion of Queries, unless in the form of *moot points*, which our correspondents take the trouble to investigate, the result being concisely stated.

Q. Why is a corporeal hereditament like a mendacious serving man?—A. Because it *lies* in livery

# The Legal Observer.

MONTHLY RECORD FOR JUNE, 1839.

—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HOMAT.

## PARLIAMENTARY DEBATES RELATING TO THE LAW.

HOUSE OF LORDS, *June, 1839.*

### COURT OF CHANCERY.

Lord *Lyndhurst*.—My lords, I rise to call your lordships' attention to the subject of the Court of Chancery, and to the present state of business in that court. I have, my lords, undertaken this task with very great reluctance, but I have been urged by representations from gentlemen at the bar, practising in the Court of Chancery, from respectable solicitors in that Court, from suitors, some of whom have been victims to the proceedings in that court; and I consider the subject to be of such deep interest to the community at large, that I feel it to be my duty to comply with the request thus pressed upon us, and to bring forward this question in the hope of devising some remedy for the evils complained of. I do not mean, my lords, to enter generally and at large into the considerations of the whole subject of the Courts of Equity. That would involve me in a discussion too wide and too entangled for the object which I have in view. That object is to point out what I consider to be a crying grievance of the Court of Chancery, and to endeavour to apply to that grievance an adequate remedy. I hope, therefore, that I shall not be charged with taking a narrow and circumscribed view of this great subject, when I state that my object is to apply a practical remedy to what I consider to be an enormous practical evil. There are now, my lords, upwards of 850 cases standing for hearing in the different branches of the Court of Chancery. There are 550 between the noble and learned Lord on the Woolsack and the Vice-Chancellor; and there are 300 before the Master of the Rolls. I am informed by persons of eminence in that Court that many of those causes have been standing for a period of three years. I am told that in the court over which the noble and learned Lord on the Woolsack so ably presides, and in the Vice-Chancellor's Court, the average period

after a cause is set down and ready for hearing before it is heard for the first time is two years and a half. Yes; the long period of two years and a half elapses before that step is taken. I am further informed that with reference to cases before the Master of the Rolls, a period of a year and a half elapses prior to the first hearing. Therefore, taking these Courts together, I may be considered as not making an outrageous statement when I say, that on an average two years elapse before a case comes to be heard. Now, my lords, this is the grievance of which I complain. It is a grievance of great magnitude; and in order that your lordships may understand the nature and effect of that grievance, allow me to explain, what has frequently been explained in this house—namely, what is the meaning and nature of a hearing in the Court of Chancery.

A hearing does not finally dispose of a case. In the greater number of cases, a decree is pronounced, by which certain other proceedings are directed to be taken. Thus, for instance, an issue may be sent to try a question of fact in a court of law, or an inquiry on certain points may be sent before the Master. The cause then is in the Master's office a year, perhaps more. The cause is then brought back again into the court upon the master's report, and if both parties are satisfied, which is the most favourable supposition that can be made, then the cause is again to be set down and heard on further directions, and then the same interval takes place as before. If it happens, which is the more common case, that the parties do not concur in the Master's report, then exceptions to it are taken. Those exceptions are set down to be argued. A long time elapses before the argument and hearing come on, and a still longer before the cause is decided. I think that the statement which I have already made is sufficient to satisfy your lordships of this, that if the case involves any very considerable interest, and is at all of a complicated description, several years must elapse between the commencement of a cause, the issuing of a subpoena, and the final decision of it. The

mischievous is the delay which takes place between the first hearing of the cause, and the time when the court is able to have it called on for decision. Allow me to point out the obvious inconveniences which arise from this course. Your lordships are aware in the first place, that in a cause in the Court of Chancery all the parties who are interested in the matter must be on the record, either as plaintiffs or defendants. In every important cause, there are many parties in this situation. What is the consequence? Parties on the record die; one life falls in, and then the cause abates. It must be revived by a new bill. It often happens, that some three or four of these abatements take place in the course of a suit. Your lordships will see at once the evil this produces in a suit.

Another evil, which is felt by all the courts of equity, is the term fee. There are 850 causes standing for hearing in the Court of Chancery. Suppose that each cause takes two years before it is heard, the mere term fees will amount to 7,000*l*. This, however, is not the only evil; for not only is the term fee to be paid to the officers of the court, but also to the solicitors of the parties, so that in proportion to the prolongation of the period before the cause is heard, is the amount of term fees paid to the officers of the court and to the solicitors. Then the situation of parties changes, and therefore it becomes necessary to file a supplemental bill, in order to shape the case to meet the new state of things previous to the hearing. That, however, which is the greatest grievance of all, not only upon the public, but also the Court of Chancery, is that the lapse of time renders motions necessary. These are supported by affidavits on one side, and opposed by affidavits on the other, and in them are involved questions of the most entangled description. All these motions arise out of delay. Accordingly in the time of Lord Chancellor Hardwicke, he said, "I will not hear your motion, but the cause. The cause must be in progress, so that I can dispose both of the cause and of the motion at once." But the state of the business in the Court of Chancery in the present day will not allow of such a course, for parties would evidently invent motions for the purpose of advancing their cause to the prejudice of other suitors. I have endeavoured, my lords, to state these evils with as much moderation as possible. I appeal for confirmation of what I have said to my noble and learned friend on the Woolsack, to my noble and learned friend opposite (Lord Brougham) and to my noble and learned friend the Master of the Rolls. I ask them, one and all, whether in the statement which I have just made, grievous as it may appear to be to many of your lordships, there is any exaggeration. I rather think that I have understated the case, because I have not entered into details upon it. The fact is, that the evil is great, is grievous, is intolerable. I could state cases of this description over and over again, but I will be content with stating one. A party is entitled to an annuity, charged upon property. That property is encumbered with debts. The trustee is unwilling to discharge

his duty, and appeals to the Court of Chancery for protection. Years elapse, and in the mean time the family of the party entitled to the annuity, cannot draw a farthing from it. They are, in consequence, either involved in want and misery, or are induced to raise money upon usurious interest—a practice ultimately leading to their ruin and destruction.

It is the duty of your lordships to provide not only for the effectual but also for the speedy administration of justice. One of the earliest and one of the most revered maxims of our law is that justice must not be sold—that justice must not be denied—that justice must not be delayed. The delay of justice, as his noble and learned friend opposite had on one occasion pointedly remarked, was equivalent to the denial of justice; and I believe that there are cases in which it would be much better for a party to have a decision at once against him than to be hung up for years for a decision of his claims, even when the decision was favourable. I beg, my lords, that in the observations I have made, and am about to make, that I may not be understood as casting any reflections on the noble and learned personages now presiding in the courts of equity. I am sure that the evil is not to be ascribed to them. My noble and learned friend on the Woolsack, and my noble and learned friend the Master of the Rolls, I know perform their duties meritoriously and successfully. I make the same observation with regard to their learned coadjutor, the Vice Chancellor, who devotes all his time, all his learning, and all his energies to the business of his court. I do not ascribe the evils now prevailing in the different courts of equity to them. I believe that they work most successfully in the administration of justice.

I believe that they exercise more time and more energy upon it than any country ought to require of its judges. I am one of those persons who think that a judge should not occupy his mind totally with the administration of justice. There is not any pursuit which does not tend, if a man devotes himself exclusively to it, to narrow the intellect and contract the understanding. A judge ought to look abroad, and to cultivate literature and science, for the lights they so acquire reflect back on the bench, and afford force and vigour to the judgment they pronounce. When I say that this state of things is not to be ascribed to any want of learning or energy on the part of the learned judges now presiding in the Courts of Chancery, I will endeavour to fortify what I have just stated by a reference to facts. I will not go back for them for more than 20 years. I will read an extract from a return made to an order of the House of Commons, and your lordships will see from it what has been the state of things for the last 20 years. I find that in the year 1819, at the close of Michaelmas Term, 950 causes were set down for hearing. I find that in the year 1824 the number was 906. I find that in the year 1829 it was 700. I find that in the year 1834, at the period when my noble and learned friend opposite retired from the Woolsack—a period

to which I shall presently advert more particularly—it was only 491. I find that in the year 1835 it was 630, then 746, then 773, and now it amounts, as I have already told your lordships, to 850. You will find my lords, from these returns, that on an average of 20 years the Court of Chancery has always laboured under the same aggravation of business so far as regarded causes standing for hearing. I have adverted, my lords, to the period of 1834 as the period when the smallest number of causes were standing for hearing. I ascribe it in part to the able superintendence of my noble and learned friend opposite (Lord Brougham), and to the extraordinary powers of despatching business enjoyed by Sir John Leach, who heard more causes in a given time than any judge who ever preceded, and I believe than any judge who may happen to succeed, him. I ascribe it also to another circumstance of the greatest importance—I mean that in the year 1832, just two years before the period I am speaking of, the bankruptcy business which formed no inconsiderable portion of the business of the Court of Chancery, was transferred to another tribunal. Yet, notwithstanding this, such has been the increase of business in that court, that the arrears are again augmenting, and there still remain 850 causes for hearing.

I know, my lords, that it has been said—and I am most anxious to vindicate the Court of Chancery on this point—that these evils did not exist in the time of Lord Hardwicke. I beg leave to say that that is an entire mistake. There are various publications of that period which describe the Court of Chancery of that day as deserving of the same complaints which are made against it at present. It is therein stated that great delay prevailed in its process, and that there was the same want of decisions, and in a word the same evils now complained of. One of these publications was entitled *Animadversions on the Court of Chancery*, and was published in 1756. But the answer usually given to this is, that the Court of Chancery was then in a different state from that in which it is now. It is true that there is now an additional judge in that court. It is true that the Court of the Master of the Rolls has been new modelled, and that the business in bankruptcy has been removed from the Court of Chancery. This is well worthy of consideration on one side; but then again on the other, the business of the court has greatly increased. According to a statement made from the woolstack by my noble and learned friend about three years ago, it appears that the number of cases now set down for hearing exceed by three times the amount of those set down for hearing in the time of Lord Chancellor Hardwicke. It appears that petitions, a very important part of the business of the Court of Chancery, now exceeded the number of petitions in Lord Hardwicke's time by seven to one; and that the motions, which now formed so heavy a part of the business of the court, exceeded the motions of Lord Hardwicke's time in the very same proportion. I

think that this statement, which I have taken pains to verify by looking at the original documents, forms a complete answer to the complaint now made against that court, and to the averment that a Lord Chancellor, having the learning, vigour and energy of Lord Hardwicke, would soon get rid of the accumulation of arrears now pressing so heavily upon it. That accumulation of arrears, my lords, has existed as long as the Court of Chancery itself. We are told that when Wolsey gave up the great seal there was an accumulation of arrears in the court over which he presided. I know from the life of his distinguished successor, Sir T. More, that he devoted himself day and night, at the commencement of his judicial career, to get rid of that accumulation. We know, by reference to the celebrated speech of Lord Bacon, in the reign of James I., that the same evil existed then, and we know also that he pointed out a way in which he conceived that it might be remedied. We have also a right to draw the same inference from a statement of Bishop Williams, who said that whilst he presided in the Court of Chancery he had decided more causes in one year than had been decided in seven by any of his predecessors. I say nothing as to the satisfaction which his decisions afforded either to the public, or to the parties affected by them. In the time of Charles I. we find the same complaints respecting the delays and arrears in the Court of Chancery brought forward in the House of Commons. We find that Lord Coke declared that there was more business in the Court of Chancery than the Lord Chancellor or the Master of the Rolls with all their industry could possibly dispose of. We find likewise that a bill was then brought in, and read a first time, for the purpose of appointing two additional judges to the Court of Chancery to get rid of that arrear of business. What was the history of that bill? It was abandoned, but for what cause is not clearly ascertained. In the reign of Charles II. we find by reference to Roger North's life of his brother, Lord Keeper North, that the same complaints then existed; indeed, he attributes the death of the lord keeper to the vexation which he felt from being unable to keep down the arrears of his court. The same complaints continued to be repeated in the time of Lord Somers, of Lord Cowper, and of Lord Hardwicke. There are persons now present, my lords, who can carry back their recollection 50 or 60 years, and who can inform your lordships that the same complaints have continued from their earliest memory down to the present hour.

Why have I stated this, my lords? To shew that there is nothing personal in my motion—to satisfy you that there is no hope by any change of the judge to get rid of the evils of the system. Your lordships are therefore bound to apply a remedy to them forthwith. Why it has not been sooner applied it is not for me to say. A trial to apply a remedy was made, as I have already stated, in the time of Charles I., but was abandoned subsequently for some reason or other which has not been



distinctly transmitted to us. But is that any reason why we should give up for ever the hope of a remedy? Here are a number of causes too great for the number of judges to hear and decide on. Here is a mass of business beyond their physical strength and energy to perform. No three judges could do it, and it goes on regularly increasing. What would you do, my lords, in any similar affair? Take for instance, the case of manual labour, where a quantity of work is to be executed in a given time. If you had not hands sufficient to execute it, you would put on more hands; you would call for greater power, until you had got power adequate to the emergency. Now, I maintain that the judges should be above their work, not oppressed by it. No man can decide rightly who is always teased to decide speedily. A judge ought to have time for deliberation, in order to satisfy the public and the parties on whose interests he is called to decide. When I had the honour of holding the great seal, I acted on this principle. I found it impossible to keep down the arrears in the Court of Chancery. The first thing I did was to see whether I could remodel the Court of the Master of the Rolls. At that time the Master of the Rolls sat four times a-week, but only three hours each evening, or about twelve hours in the week. In substance, he did not sit twelve hours in the week, for the Court of Chancery broke up earlier than it would have otherwise done in order to let the counsel practising in it attend before the Master of the Rolls at six in the evening. I applied to my honourable and learned friend the late Sir John Leach on the subject, and I asked him if he would give up his evening sittings and sit in the morning, as the other judges were accustomed to sit. I owe it to the memory of that learned judge to say, that he agreed promptly and at once to my proposition. The effects of that change were soon discovered. The arrear was kept down, but still the measure was not, I contend, adequate to the occasion. I thought that it was necessary that something further should be done. I considered that permanent improvement was hopeless without a legislative measure. I therefore brought in a bill on the subject, which I renewed in a subsequent session, and which fortunately received the unanimous approbation of your lordships. It was supported by those great lawyers Lord Tenterden and Lord Eldon, and I believe by Lord Redesdale also. It went down to the other house of Parliament. I know not from what cause—whether it was from party or from some other cause, but my worthy friend opposite took no part in it—but I believe, from some motive of party, it was there violently opposed. An honourable and learned gentleman, a former colleague of mine, Sir C. Wetherell, distinguished himself by the strenuous opposition which he directed against it. The terms which he applied to the bill itself, and to the prospective judges under it were of the most extraordinary description. By-the-by, I recollect now that my noble and learned friend opposite

(Lord Brougham) did take a part in that opposition. He said that it would make the office of the Lord Chancellor a sinecure—that the Lord Chancellor would have nothing to do but to take the fees of his office, and that he would soon devolve all its duties upon his deputy. Whatever was the motive, the opposition to my bill was carried on for two days with great vigour. A vote, was, however, come to at last in its favour. In a few days afterwards the demise of the Crown took place, and the bill was in consequence abandoned for the session. I merely state this to show that my views on this subject have always been the same, and that I have long thought that there were more causes to be decided in the Court of Chancery than the judges of that court were physically able to decide. Then, my lords, if this be the case, you ought to have, and you must have, a greater number of judges.

It is true that it may be a great inconvenience to establish a new court. It is true that it may be an inconvenience to the bar and many persons connected with it. But let us look, my lords, at the other side of the question. There may be an inconvenience such as I have stated; but that inconvenience bears no proportion to the evil which exists now, when causes of the deepest importance to the interests of families remain unheard and undecided from the want of sufficient physical force in your judges. One objection to the bill which I proposed was continually brought forward in the other house of parliament, and to it I will beg leave for a moment to advert, because it is material. At that time the business of bankruptcy was connected with the Court of Chancery; it occupied a considerable part of the time both of the Chancellor and Vice Chancellor, and a gentleman now no more, who took the Court of Chancery under his protection for a great many years, always said—“Why not detach the business of bankruptcy from the Court of Chancery? That will give sufficient relief; it is unnecessary to appoint an additional judge; the object will be attained by relieving the court of its bankruptcy jurisdiction.” I objected to that course—first, because I thought the relief would be altogether insufficient; and next, I objected to it, because I considered that the appellate jurisdiction in cases of bankruptcy was better vested in the judges of the Court of Chancery than in any other tribunal. The experiment, however, was tried by my noble and learned friend opposite (Lord Brougham) very soon after he accepted the great seal. I say not whether the appellate tribunal that has been substituted in lieu of the Court of Chancery be or be not an improvement, because it has nothing to do with the present question; but I advert to the separation of bankruptcy from the Court of Chancery for this purpose—to show that I was right in the opinion I then gave that the relief thus afforded would not be sufficient. The separation undoubtedly relieved the Lord Chancellor and the Vice Chancellor to a considerable extent; but the increase of business was more

than commensurate with that relief; and the change made no alteration substantially in the amount of the arrears. Three years ago my noble and learned friend on the woolsack brought forward his measure for the reformation of the Court of Chancery. I then again suggested, for the last time, what I have always considered the most simple and appropriate remedy; but I was told that my measure was too narrow: that it was mean and scanty in its object; that my noble and learned friend had a much more extensive scheme, to new-model the Court of Chancery and the whole appellate jurisdiction; his plan, however, did not meet with your lordships' approbation, nor even of my noble and learned friend's opposite. My noble and learned friend on the woolsack would not accept my proposal, and nothing from that time to this has been done upon the subject.

I will tell your lordships what has always been my course upon this question. The noble Viscount opposite (Melbourne) introduced the other evening the phrase "progressive reform," which most appropriately described the course which I have always pursued with reference to the Court of Chancery. My object was to carry into effect all the orders of the commissioners which were directed to simplify the progress of the cause up to the time of hearing; but I said, and most naturally, what is the advantage of expediting a cause up to the time of hearing, unless you afford further facilities for hearing? The cause would stop, though at another stage. Accordingly the next step I took was to suggest further means for the hearing of causes. There I was defeated. My next object, as I over and over again stated, would be, if that immediate object had been accomplished, to direct my attention to the appellate jurisdiction of the court. I considered it premature to endeavour to reform the appellate jurisdiction until I had first taken the means for reforming the great and grievous defect—the deficiency of the power for hearing causes. When it was suggested that a new judge should be appointed for the purpose of facilitating the hearing of causes, it has been met by this observation:—"What good would you do by it? You will only increase the number of appeals, and the Court of Chancery is already blocked up with its appeals." I never considered there was the least weight in that objection, for this reason:—Suppose there are 800 causes to be heard, and a certain proportion, 50, the subjects of appeal; by hearing them all, 750 are disposed of, and the other 50 remain for appeal; but it is just as well for them to remain in that stage upon appeal, as for original hearing; because they still would have been left for hearing. There is no validity in the objection, even if it applied at all, but it does not apply; for the appeals are to a very great extent disposed of. To my noble and learned friend opposite (Lord Brougham) we are mainly and entirely indebted for this. When he took the great seal there was a great arrear of appeals; and when he left there was only 26 appeals remaining, which

I understand are now reduced to 16 or 17. My noble and learned friend disposed of 140 appeals in one year. I know he sat up day and night, and worked most laboriously, for the purpose of accomplishing that object; and that object he did accomplish. There is at this moment no arrear with respect to appeals; and therefore the argument to which I refer does not now apply. But it is said that the Chancellor can now devote his time to original causes. I believe that last year my noble and learned friend on the woolsack heard between 60 and 70 causes, but I don't believe that he has lately heard many original causes. I am told that appeals are on the increase, and I know, from the state of business in this House, that it is impossible to give any effectual attendance on original causes. There are 100 appeals undecided; 40, or nearly 40, have been heard, and are waiting for judgment; and 60 remain to be heard, with only about six weeks of the session before us.

I have now, my lords, pointed out the evil, and what appears to me the practical remedy. What makes the want of the application of this remedy the more extraordinary is what I am now about to mention—the state of the Court of Exchequer. The Exchequer is a Court of Equity as well as a Court of Law; they are separate and distinct from each other. The Court of Exchequer in Equity has all the machinery of the Court of Chancery—it has all the offices, all the officers, everything necessary for the purpose of constituting a proper court; but there is no judge. You have a court without a judge, as far as equity is concerned. Let me not be mistaken. My noble and learned friend, the Lord Chief Baron, when he can be spared from the common law business, sits in equity; Baron Alderson, too, when he can be spared, sits in equity; and both administer justice on the equity side to the perfect satisfaction of the bar and the suitors. But this is done to the great inconvenience of the common law business of the Court; and in the next place not one-third of the time which a permanent judge could give in equity are they able to devote in consequence of their other duties. Not only so, it is productive also of this great inconvenience.—There is as much common law business in the Court of Exchequer as in the Queen's Bench; there is the same establishment of judges; how inconvenient then, the judges of the Queen's Bench not being too numerous, to draw away one of the judges from the Exchequer for the purpose of administering justice in a Court of Equity? I have conversed with these learned persons, and they tell me that the inconvenience to the Court on the common law side is extremely great. It is extraordinary that they should not have five judges devoted exclusively to common law, when the Common Pleas, so greatly inferior to the Exchequer, has five judges entirely occupied with the common law business of that Court. What then is the obvious remedy? To appoint a permanent judge on the equity side of the Exchequer. Leave the five common law judges to administer the

common law of that Court, and appoint an equity judge to preside over the equity side. Is not this an obvious remedy? Why not adopt it? What can be more plain, simple, and rational? What objection can possibly be urged against it? It is not the first time I have made this proposition. I have made it over and over again; but by some fatality, when the Court of Chancery is concerned, no two persons can concur in opinion, and nothing is done. But I am not wedded to this particular mode of getting rid of the evil. If my noble and learned friend on the woolsack, or my noble and learned friends opposite (Lords Brougham and Langdale), think any other means better calculated to attain the object in view,—if they think it better to have another judge of the Court of Chancery, instead of having a complete equity judge in the Exchequer, I will accede to their proposition. I will do still more. I say that such is the state of equity business, and such would be the increase of equity business if there was the power to carry it on, that there would not be too much force if there were both an equity judge in the Exchequer, and an additional judge in the Court of Chancery. This would be attended with the additional advantage that it would enable one of those judges to act as permanent president of the Judicial Committee of the Privy Council. That Court will never be a completely effective Court, palatable to the bar and to the suitors, until you have a permanent judge presiding in it. My noble and learned friend opposite (Lord Brougham), whenever his important avocations admit, presides there with great advantage to the suitors and the public; but that is merely temporary; we are to look forward to the future; we shall not always have the assistance of my noble and learned friend in that department: and I think, therefore, one of the most important beneficial consequences of the measure I propose is, that it would give a permanent president to the Judicial Committee of the Privy Council. This is necessary above all things from a consideration to which I must for a moment allude. The consideration is this:—The Judicial Committee of the Privy Council is conversant not in equity alone, not in common law alone, but it has to administer Spanish law, two different kinds of French law, and Dutch law: it has to direct its attention to all these various departments. How important, then, is it to have a permanent president, in order that he may feel it his duty to qualify himself to administer justice in such complicated matters with satisfaction to the suitors of the Court. Another practical advantage, of no inconsiderable importance, which would result from this, would be, that the bar of the learned judge would follow him from his Equity Court to the Privy Council. The bar would also become possessed of that information which was necessary to the administration of justice; there would thus be a permanent bar and a permanent judge to administer justice in one of the most important tribunals of the country. I would appeal to the noble marquis opposite (Lansdowne), the

Lord President of the Council, who has had the opportunity of witnessing the proceedings in that Court, and the nature of the business which comes before it, whether what I have stated is not correct, and whether benefits the most important would not result from the adoption of the measure which I have proposed.

I have endeavoured, my lords, to confine myself, according to what I stated at the outset, to one point. I have not gone into the various considerations that present themselves as connected with the Court of Chancery. They are complicated beyond measure. But here is one evil on which I place my finger—a grievance the most heavy that prevails in that Court—namely, the arrears of causes set down for hearing. It is to that I apply my present remedy; and I trust I shall be successful in proportion to the simplicity and singleness of my view. If I had entangled it with other matter connected with the Court, your lordships would have lost sight of my real and main object. It is because I am desirous of obtaining a practical remedy to a great practical evil, that I have confined myself to this view of the case. I know there are persons connected with the profession who say you should begin at the other end; that you should, in the first instance, consider the appellate jurisdiction and new model the whole system. I say, I will not embark in that course; different opinions exist with respect to it, and the best means of attaining the end proposed; and if we once engage in a controversy of that kind, the object I have in view never will be attained. My noble and learned friend on the woolsack three years ago brought forward his plan for a reform of the Court of Chancery. It was not approved of by my noble and learned friend opposite (Lord Brougham.) He also had a plan, much more comprehensive and much more extensive than my noble and learned friend on the woolsack. My noble and learned friend the Master of the Rolls (Lord Langdale) has also a plan for the reformation of the appellate jurisdiction of the Court of Chancery. I say nothing as to the merits of these respective plans. I don't wish to interfere in this war of giants. I don't think myself safe within the wind of such commotion. I wish to take a more humble course. *Cautus minium*, may be said of me: I admit the *timidusque procellæ*. It is because I fear the storm that I have not taken a more extended course; and now, having pointed out what I consider the proper remedy for the practical evil which I have exposed, I leave the case in the hands of her Majesty's Ministers. I shall be asked, "Do you mean to introduce a bill?" I answer distinctly No. I might succeed in carrying a bill through this house; but I fear the probability is, it would somehow or other, share the fate of my former bill in another place. I wish it should have a father that can better support and protect it in the warfare in which it must engage. I think my noble and learned friend on the woolsack, or some member of the government, if they agree in the general view I take, ought to bring in a bill upon this subject. If they do so, the measure

shall receive my most cordial support, because, I own I am anxious for the attainment of the great object I have in view, not merely as a member of a profession with which I have been long connected, but, above all, because I think it of the utmost importance to the interests of the suitors and of the community at large.

The *Lord Chancellor* said, that he agreed in much of what had fallen from his noble and learned friend upon this important question. He also agreed that it would be highly expedient, if practicable, to establish an appellate jurisdiction very different from that which was at present in existence. He also thought it would be highly advantageous that the head of the Court of Chancery should exclusively direct his attention to the business of that Court. It would be in the recollection of the House, that in the year 1836, he had submitted to them a bill, the object of which was Chancery reform; and it would be also recollected that extreme difficulty was experienced in the attempt to separate the appellate jurisdiction from that house. He was therefore compelled to abandon that plan, and so to modify his bill as to render it acceptable to their lordships. It was his opinion that it would be highly desirable that a permanent judge should be appointed, who, holding the great seal, should preside over the proceedings of that house, and over the appellate jurisdiction of the Privy Council; but unfortunately, as he thought, that suggestion was not adopted, and though his noble and learned friend entertained a different opinion, nevertheless he still must be allowed to say that it would afford him great satisfaction if a change of that nature could be effected. With respect to appeals, he thought it necessary to observe, that on the last day of term it was his practice to look at the number of appeals, and as a general rule, admitting of hardly any exceptions, to proceed in the sittings after term with the hearing of original causes. He was enabled from the present state of the business in the Court of Chancery to say, that there had not been recently any increase of appeals, nor was there any probability of their gaining head. The press of business, however, rendered it necessary for the Vice Chancellor to take none but short causes; every cause of length, every cause likely to lead to protracted argument, was left in the list; all the short causes being taken out, the long causes being left in the list, precisely because they were long causes, and because they were difficult; that did not tend much to encourage him to deal with original causes. He trusted he need hardly assure their lordships that when Parliament was not sitting he gave all the time which he possibly could to the business of the Court of Chancery, but he frankly acknowledged that he did not find himself able to accomplish anything considerable, compared with the evils which existed; for it would be impossible for him in less than three years to get rid of the causes at that moment before the Court; if he had nothing else to do it would take him three years to get through them. In the year 1836, he had

stated his view of the whole system—he had expressed his conviction that an increase of judicial strength was required in order to grapple with the old arrears, and to prevent the accumulation of new; he had always done his utmost so far as it depended on himself individually, but he was able to effect comparatively nothing. Their lordships might rest assured, if they would credit his experience, that justice could not be as fully and as promptly administered under the present system as it ought to be, and that it was necessary to add to the judicial strength of the court. He should gladly accept anything as a palliative; he should not object to a proposition, merely because he did not think it sufficient; he should be glad to have it, if it did something, though more might be required.

When he brought forward his bill in 1836, it was said that he lost every thing by seeking to do too much. Others again affirmed that his ill success arose from asking too little; be that, however, as it might, he would take upon himself to say that the remedy proposed by the noble and learned lord was only a small part of that which the necessity of the case required, but he acknowledged that it was directed against that portion of the evil which most urgently demanded a remedy. The property involved in causes before the Court of Chancery was varied and enormous. The new mode of communication by railroads, for instance, recently introduced into this country, had added in an inconceivable degree to the business of that court. During the recess of last year, he was obliged to return to town for the purpose of deciding contests upon that very subject. But that was only one of the many instances giving rise to an increase of business. Every new scheme connected in any way with property, immediately came before the Court of Chancery, in some shape or other. The noble and learned lord (Lyndhurst) had alluded to the state of business in the time of Lord Hardwicke, who left the great seal in 1756. In five years from that period the average number of causes was 401, while they averaged between the years 1831 and 1835 no less than 1283. In comparing the average number of petitions at those respective dates, he found that in the former it was 371, and in the latter 1300. The average number of appeals brought before Lord Hardwicke in each year was 12, while between the years 1831 and 1835 it was 55. The amount of money in the Court of Chancery in the year 1812 was 28,370,000*l.*, and the number of causes 6256. In the present year the amount of money was 40,600,000*l.*, and the number of causes 10,914. From their lordship's report in 1823 it was manifestly impossible that any person holding the Great Seal could get through the business of the Court of Chancery and at the same time attend to that of their lordships' house. If that were the case in 1823, their lordships would see, by the comparative state of business between that period and the present, that the impossibility was rendered much more striking. He well remembered that his noble and learned friend used to

commence business at 10 o'clock in the morning, and conclude at 12 or 1 o'clock at night. His noble and learned friend, and he himself, might be able to bear the fatigue of such continued labour; but that was not the question. The question was, whether it was advantageous to the suitors, or best for their interests. In his opinion it was not. In his opinion it would be unworthy of the country to ask for or expect it; but it did not. He conceived that no judge could satisfactorily perform his duty who did not take a large portion of time out of court to investigate, and consider, and consult authorities, and make up his mind upon what he had heard in court. When upon their decision depended whether property should pass from the right owner to the wrong, or remain where it was—when by their decision many families might be reduced from happiness to misery, it behoved them to use all the means, and all the best means, within their power, in order to come to a right decision. That was the consideration which ought to operate upon every judicial mind. But how was it possible that that could be done if they hurried through their business? Consistently with that principle and with that object, the Court of Chancery was at this moment totally incapable of discharging its functions; and yet the Judges of that court were not idle. In communicating with the Vice Chancellor that day, he found that he had commenced his labours for the day at 4 o'clock in the morning, the very hour at which he (the Lord Chancellor) had concluded his labours of the previous day; so that the Court of Chancery, it might be said, was up all night. The public, he was sure, would not require more than that, and if they did it would be impossible to give them more. He hoped his noble and learned friend would concur with him in the necessity of going still farther than he proposed to go, notwithstanding what had been said by his noble and learned friend (Lord Brougham.) It was quite obvious that the reform proposed by his noble and learned friend must take place; but the very step which he suggested would lead to still further changes.

Lord *Lyndhurst*.—I don't mean to say that what I propose should be final.

The *Lord Chancellor* was glad to hear his noble and learned friend say so. But then his noble and learned friend, whose plan was only half a plan—not even half a plan—did not seem to have the necessary intention of meeting the evil entirely. Between the years 1813 and 1821, the Lord Chancellor heard nothing but appeals. At present he was not able to get through the appeals from two judges: and the proposition was, that he should get through the appeals from four judges. It was suggested that there should be an equity judge. There was not business for an equity judge. They might take away the equity cases from the Court of Exchequer, and appoint another judge in the Court of Chancery, who would dispose of those cases and be able also to devote time to the business of the Court of Chancery. The first duty which would devolve on them upon any change being made would be

to get rid of the arrears of the Court of Chancery. So soon as they found the means of having the business of that Court done, then would the business be increased. When the Vice Chancellor's Court was created in 1813, that was the immediate result. The average number of cases for the three first years was 540, and for the three following 717. Under all these circumstances, it was evident that the public would derive very great benefit from some such change as was proposed, and, although it was far short of what they had a right to expect, he willingly consented to it.

Lord *Langdale* felt the highest satisfaction at the course which had been taken on the present occasion, characterized as it was by an entire absence of party feeling, and by a concurrent desire to do that which would be most beneficial to the country. To say that the particular suggestion of his noble and learned friend opposite was perfectly satisfactory would be absurd. He could not do so. He felt with him, however, notwithstanding what had fallen from the noble and learned lord (Brougham) who had left the house, and he believed that all those who had dispassionately given their attention to the subject elsewhere likewise felt, that the arrears of the Court of Chancery constituted an enormous and intolerable grievance, as observed by his noble and learned friend opposite, which ought to be got rid of as soon as possible. He believed his noble and learned friend had understated the case, notwithstanding the clear and forcible manner in which he had brought it forward. The great grievance was that of delay to parties who were prepared: and the remedy proposed an increase of judicial strength. But the remedy, as applied by his noble and learned friend, might lead, as he had admitted, to subsequent inconvenience. His noble and learned friend said that perhaps it might turn out that the increased number of arrears could not be heard; and that if it should so turn out he would be willing to remedy that evil. He wished his noble and learned friend would go farther, and prevent the evil while he foresaw the probability of it. In his (Lord *Langdale's*) opinion, they ought to separate the judicial from the political functions of the Lord Chancellor altogether. It was impossible he could perform both efficiently. He also thought that they could not have a perfect remedy for all the grievances at present existing in the Court of Chancery, unless they had a constantly sitting court of appeal in that House, independent of the judges of the Court of Chancery. With regard to the Court of Exchequer, he believed that his noble and learned friend said he would be disposed to concur in the appointment of another equity judge to that Court; but he (Lord *Langdale*) doubted whether, in the present constitution of the Court, there would be business for another judge. If the equity jurisdiction of that Court were abolished, and all the equity causes now subsisting in it transferred to the Court of Chancery, then would there be ample employment for another judge in that Court. The noble and learned Lord opposite (Lord

Lyndhurst) having consented to the appointment of two new equity judges, the only question appeared to be, how their services might be most effectively made use of. The noble and learned lord proposed that one of the new judges should sit in the Court of Exchequer. That, however, did not appear to him (Lord Langdale) to be the most advisable course to adopt. It was said that it would have the advantage of giving only one appeal from the decision of the new judge; but what were called appeals before the Lord Chancellor were not, properly speaking, appeals, but re-hearings, which differed in many respects from appeals. These re-hearings he (Lord Langdale) considered very beneficial, as they were often the first occasions upon which cases were fully understood and argued. At the original hearing points were frequently raised in such a manner as to be a surprise upon one of the parties, and, in fact, a party hardly understood his own case until he heard what his adversary's was. Now, in the Court of the Exchequer, as it existed at present, the re-hearing must take place before the same judge who heard the cause originally; which certainly appeared not to be so advantageous a course as that which prevailed in the Court of Chancery. If, therefore, it were determined that one of the new judges should sit in the Court of Exchequer, it would be desirable to provide means for allowing the causes which came on before him to be re-heard before the Lord Chancellor, and that arrangement would have the additional advantage of securing uniformity of decision.

Lord Lyndhurst said, that it was his object to render the equity side of the Exchequer an effective Court. He feared that the proposition to appoint two new judges in Chancery would meet with difficulties elsewhere. It would be best to try, in the first place, what would be the effect of creating one new judge.

#### ANCIENT LAW EXPENCES.

Anno 34 Hen. 8.

HEREAFTER follows the costs, charges, and expences in purchasing of the King's g'ce certain p'cells of the late Abbey Lands lying about and nigh unto ye Citty. Laid out and p'd by Mr. Henry Over.

Impr'is. Paid to Mr. Chancellor of the Augmentacon, for his reward . . . . .	li.	s.	d.
It. P'd to Mr. Baker, 20 angells	07	10	00
It. P'd to Mr. Chancellor's clerke . . . . .	00	10	00
It. P'd for the warr't . . . . .	00	07	06
It. to Mr. Burgoy, for ye p'ticulars . . . . .	02	00	00

	li.	s.	d.
It. to his clerk . . . . .	02	00	00
It. for the search of a lease in Duke's office . . . . .	00	02	00
It. To Mr. Morgan . . . . .	00	02	00
It. Spent at a breakfast upon ye officers, for their speed and friendship in the matter . . . . .	00	07	00
It. In reward to Mr. Duke's clerk for making ye paper-book . . . . .	00	15	00
It. To How, his clerk, for extending the book . . . . .	00	05	00
It. To Morgan, for mending the book . . . . .	00	02	00
It. To Mr. Duke, for his fine . . . . .	03	00	00
It. To Mr. Baron and Mr. Henley, for extending and penning the book . . . . .	02	05	00
It. Paid for writing the book in parchment . . . . .	01	00	00
It. Paid to the officers, for extending the same book . . . . .	00	15	00
It. Paid to Mr. Baron's clerk, for his pains therein . . . . .	00	05	00
It. Paid alsoe to another clerk, for the same . . . . .	00	02	00
It. Paid to Mr. Chancellor's clerk att the Court . . . . .	00	07	06
It. Paid to Mr. Houneg, clerk at one time . . . . .	00	07	06
It. Paid to Edward, for that that he did not make the bill . . . . .	00	05	00
It. Paid to Mr. Bremly Graunt, for his counsell . . . . .	00	05	00
It. Given to Mr. Chancellr of the Tenth to call speedily for his book . . . . .	01	02	06
It. Given to Mr. Henege, for his reward . . . . .	02	05	00
It. To his clerk . . . . .	00	15	00
It. Paid at the receiveing of the money . . . . .	00	10	00
It. Paid to Doctor Cromer . . . . .	03	00	00
It. To Mr. North, treasurer, for the for bearing to 7th. 11 yards of Damask . . . . .	04	02	06
It. Paid to Wm. Wightman . . . . .	00	15	00
It. Paid to Mr. Treasurer . . . . .	00	15	00
It. Paid for the Signet Seal . . . . .	03	06	08
It. Paid for the Privy Seal . . . . .	01	16	08
It. Acquittance for the money . . . . .	00	05	00
It. To Glascort . . . . .	00	05	00
It. To Water, Mr. Chancellr clerk . . . . .	00	05	00
It. A recognizance, with the fee, and making thereof . . . . .	00	10	00
It. Paid for the petty fees . . . . .	01	04	00

	<i>li.</i>	<i>s.</i>	<i>d.</i>
It. the Clerk of the Chamber .	00	06	08
It. Paid for a writt of allowance	00	05	00
It. Paid for wax and examining the book . . . . .	00	03	04
It. for enrolling the same . .	02	13	04
It. for writing the book to the Great Seal . . . . .	03	00	00
It. for a tun of wine given to the Lord Chancellor . . .	03	06	08
It. Given another time to Graunt Bromley . . . .	00	05	00
It. Paid to Marten . . . . .	00	07	06
It. Paid to Mr. Cowper . . . .	01	10	00
It. Paid to Mr. Treasurer, 40 angells . . . . .	15	10	00
It. To Mr. Cowper's Grants . .	00	11	03
It. Paid to John Hill . . . . .	07	00	00
It. Paid to Mr. Marshall . . .	00	13	04
It. Paid to the King's g'ce to the hands of Mr. Treasurer .	1378	10	06
It. Paid for 2 dozen of spoons .	06	6	3
Sum Tot. . . . .	1477	11	4

Towards wh charge the s'd Mr. Over  
rec'd these sums following:

*Anno 34 Hen. 8.*

	<i>li.</i>	<i>s.</i>	<i>d.</i>
Impr'is. He rec'd at London, of Mr. White, merchant taylor . . . . .	1000	00	00
It. He rec'd out of the com- mon box as appeareth . . .	20	00	00
It. He rec'd a ring of gold . .	00	05	08
It. He rec'd of the city's goods being in his own hands and in Mr. Warren's hands . . .	400	00	00
It. He rec'd for half a year's rent of the same lands pur- chased 15s., due at Mich. last . . . . .	40	00	08
Sum Totall received	1466	03	08

And soe is oweing to  
the s'd Mr. Over . . . . .

Allowed alsoe to the said Mr. Over, for his charges in being Burgesse of the Parliam't, 8*li.*; of the which he remitted 5*li.* in recompence of such money he had in loan; and soe was owing to him 14*li.* 7*s.* 8*d.*; whereof was paid unto him 14*li.* out of the common box, by the hands of Mr. Mayor, the 12th day of January, Anno 34 Hen. 8, and the odd 7*s.* 8*d.* he remitted.

## BARRISTERS CALLED.

*Trinity Term, 1839.*

### LINCOLN'S INN.

Edward Horne Hulton.  
John Percy Severn.  
George William Collins.  
John Alexander William Harper.  
John Robertson.  
William Heath Bennett.  
James Winckworth Winstanley.  
Henry Hallett Maude.  
Joseph Livesey, Jun.  
William Fenton Fletcher Boughey.  
Charles Richard Hoare.

### INNER TEMPLE.

Robert Anstruther.  
Sebastian Stewart Dickinson.  
John Holland.  
Peter Joseph Burke.  
Thomas Foljambe.  
Thomas Bird Hughes.  
Richard Bourke.  
Osmond Arthur Wyatt.  
William Pitt Byrne.  
John Edward Bright.  
Lewis Hoffman

### MIDDLE TEMPLE.

James Abraham Foot.  
Charles Egan.  
Charles Douglas Stewart.  
Charles Simpson.  
Thomas Goddard Grinfield.  
Thomas Eaton.  
William Speed.  
John Glasgow Grant.  
John Jones.  
James Anderson.  
John Nash Tyndale.  
John Lawson Kennedy.  
Alexander Crichton.  
Thomas Young Prior.  
William Macoubrey.  
Charles Lloyd.  
George Bowyer.  
Edward Welsh.

### GRAY'S INN.

Samuel Saunders.  
Richard Else.

CANDIDATES WHO PASSED THE TRINITY TERM EXAMINATION, 1839

<i>Name of Applicant.</i>	<i>Name &amp; Residence of Attorney to whom articulated, assigned, &amp;c.</i>
Ans dell, Josias Thomas	John Ans dell, St. Helen's, Lancaster; assigned to Marmaduke Foster, Manchester; and Joseph Lacon, Liverpool.
Ash, William	George Cooke, Bristol.
Ball, Charles Sutton	Charles Harrison, 14, Southampton Buildings.
Barlow, John	James Winder, Bolton-le-Moors.
Birch, Thomas	Thomas Briggs, Lincoln's Inn Fields.
Bird, Henry	John Cole, Odiham and Basingstoke.
Blake, Charles	Charles Bridger, Winchester.
Bond, Edgar	James Winter, Norwich.
Bradburne, Edmund	Baker Gabb and William Woodhouse Secretan, both of Abergavenny, Monmouth.
Brooks, James Willis	Thomas Cooper, 24, Lincoln's Inn Fields; assigned to James Sheffield Brooks, 29, John Street.
Bryant, Isaac	Henry Rowden, Wimborne Minster.
Busfield, Johnson Atkinson	William Welle, Bradford.
Busfield, Currer	John Hampson, Manchester.
Carter, William	John Richard Carter, Spalding; assigned to Richard Willis, 6, Tokenhouse Yard, Lothbury.
Champney, Henry Nelson	Jonathan Geary, York; assigned to William Geary, the younger, York.
Clegg, John	Joseph Morris, Bradford.
Coles, Henry Thomas	William Lewis, 4, Woburn Place, Russell Square.
Coppin, John Frederick Augustus	Broome Pinniger, Newbury, Berks.
Crabb, Frederick	John Bayly, Devizes.
Davis, Michael	Henry Mostyn, Usk.
Downing, Francis	Thomas Hardwick Merriman, 16, Southampton Street, Bloomsbury Square; assigned to William Wyke Smith, 16, Southampton Street, Bloomsbury Square.
Dukes, Henry Clifton	Thomas Dukes, Shrewsbury.
Dunsford, Walter Comyns	Nicholas Broadmead, Langport, Somerset; assigned to Richard Reeder Crosse, Puriton, Somerset.
Edgell, Alexander	James Heywood Markland, Inner Temple.
Edmunds, John	Richard Edmunds, Worthing.
Engleheart, William Hayley	Charles Jennings, 4, Elm Court, Temple.
Eyre, George Lewis Phipps	William Gunner, Bishop's Walsham.
Fellowes, Thomas Abdy	William Clark Merriman, Marlborough; assigned to Edw. Hillier, 38, Cumming Street, Pentonville.
Few, Charles, the younger	Robert Few, 2, Henrietta Street, Covent Garden.
Filliter, Henry	George Filliter, Wareham.
Gibson, George	Joseph Willis, Gateshead, Durham.
Glynn, Edward	Matthew Clayton, Newcastle-upon-Tyne.
Goulden, William Whitelegg	Charles Poole, Altrincham, Chester; assigned to Thomas Potter, Manchester.
Graham, Thomas Hedges	William Graham, Abingdon.
Halton, Henry James	William Dobinson, Carlisle.
Hamlin, Thomas	John Baker, Aldwick, in the parish of Blagdon, Somerset.
Harris, Thomas	Thomas Harris, the elder, Kingsbridge.
Hillier, Henry Jenner	John Halcomb, Marlborough.
Hills, Thomas	Walter Hills, Chatham.
Humphry, William James	Price & Co., Chichester.
Hutson, John	Mark Jameson, Berwick-upon-Tweed; assigned to Thomas Kirk, 10, Symond's Inn.
Hurley, William Frederick	John Rodd Griffiths, Chipping Campden; assigned to John Bridges, 23, Red Lion Square.
Irwin, Anthony Wellington	Charles Stewart Clarke, Bristol.
Jervis, George Mathewman	Henry Vickers, Sheffield.
Kirsopp, William	Nicholas Ruddock, Hexham.
Langhorne, John Bailey	George Waugh Stable, Newcastle-upon-Tyne.



<i>Name of Applicant.</i>	<i>Name &amp; Residence of Attorney to whom articulated, assigned, &amp;c.</i>
Layard, Austen Henry	Benjamin Austen, Gray's Inn.
Levy, Lewis	George Drew, 185, Bermondsey Street.
Lewellin, Daniel	John Brownrigg Gore, Rolls Chambers, 89, Chancery Lane.
Lightfoot, Rook Tiffen	John Lightfoot, Wigton, Cumberland.
Lightfoot, Henry Wellesley	John Robson, 26, Castle Street, Leicester Square.
Lowe, Richard	Abraham Flint, Uttoxeter; assigned to Francis Blagg, Uttoxeter.
Lowry, Joseph Stamper	Henry Jackson, Kirkly Stephen, Westmorland; assigned to William Carrick, Brampton, Cumberland.
Lyne, William John	Wilson Perry, Whitehaven.
Marshall, John Edwin	Henry Marshall, Durham.
Marshall, William	Henry Marshall, Durham; assigned to John Edwin Marshall, Durham.
Mecey, John William	Jeré Bunney, Newbury, Berks.
Mends, Herbert Archibald Gibson	Robert Edward Moore, Plymouth.
Milne, Charles	Nathaniel Charles Milne, Inner Temple.
Mortimer, William, the younger	Thomas Bartlett (deceased) and Charles Oldfield Bartlett, Wareham; assigned to Oxley Tilson, 29, Coleman Street.
Mules, Henry Charles	Philip Mules, Honiton, Devon.
Nicholson, John	John Slater, Hawkshead.
Norman, John	William Nanson, Carlisle.
Norman, James Ormond	Thomas Swain, Frederick Place, Old Jewry.
Northwood, George	John Huish Webber, Caroline Street, Bedford Square; assigned to Charles Bedford, Worcester; assigned to Walter Branscomb, of 1, Wine Office Court; Tring; and Richard Benson, of Tring and Aylesbury.
Oliver, Daniel James	Daniel James Lee, Field Court, Gray's Inn.
Pain, Thomas	George Lamb, Basingstoke and Odiham.
Palmer, William Henry	William Palmer, Doncaster.
Pickering, Joseph Henry	John Flewker, Derby.
Pinckney, George Henry	Edward Hillier, 6, Raymond Buildings.
Raw, Joseph	Francis Pearson, Kirkby Lonsdale.
Richards, Thomas	James Thomas, Llandilofaur.
Richardson, Joshua Thomas	Michael Milton, Pontefract.
Rigge, Thomas	Robert Moser, Kendal, Westmoreland.
Robinson, Henry	Wootton Byrchinshaw Thomas, Chesterfield; assigned to John Brown, Sheffield.
St. Aubyn, William St. John	Fleming St. John, Lancaster Place, Strand; assigned to William Henderson, Lancaster Place; and Edward Erskine Tustin, 4, New Bridge Street, Blackfriars.
Scott, Edward Wilson	Richard Wilson, Kendal.
Sealy, Henry	John Teesdale, 31, Fenchurch Street.
Shum, Robert	Henry Manisty, King's Road, Bedford Row.
Smith, Richard Curgenven	Jonathan Luxmore, Plymouth.
Smithson, Oswald	Robert Smithson, York.
Starling, Thomas	Edward Starling, 40, Leicester Square.
Staunton, Edward	Thomas Staunton, Bath; assigned to Thomas Rainford Ensor, 14, South Square, Gray's Inn.
Stevens, Frederic	William Stevens, 10, Little St. Thomas Apostle.
Stowers, Thomas	James Puttock, Epsom.
Taunton, William Doidge, the younger	William Doidge Taunton the elder, Totnes.
Teulon, Peter Ross	Joseph Pope Hammet, 12, Southampton Buildings.
Thorner, Paul Harrison	Alexander Liddle and William Whiteside, Poulton.
Trevor, James	John William Trevor, Bridgwater; assigned to Thomas Loftus, New Inn.
Tripp, John Rolley	Leyson Orton Lewis, Llandilo, Carmarthen.
Turner, John Hawkes Valentine	Henry Miller, Frome Selwood, Somerset.
Upton, Henry	John Luttman Ellis, and William Hale, Petworth.
Underhay, John	James Pitts, the younger, Exeter.
Vymer, Charles James	Simon Adams Beck, Ironmongers' Hall, Fenchurch Street.
Walcot, Thomas	Henry Enfield, 19, Southampton Buildings; assigned to Thomas Cuvelje 19, Southampton Buildings; and William Skilbeck, 19, Southampton Buildings.
Warrand, Alexander	Thomas Parker, 10, St. Paul's Church Yard; assigned to Charles Stuart Voules, 16, Bloomsbury Square.
Washbourne, William	Clement William Unthank, Norwich.
Watson, William, the younger	William Watson, the elder, Barnard Castle, Durham.

<i>Name of Applicant.</i>	<i>Name and Residence of Attorneys to whom articulated, assigned, &amp;c.</i>
Wellborne, Charles	William Morris Elkins, 4, Cook's Court, Lincoln's Inn.
Wells, William	William Bury Wells, Dursley; assigned to Henry Bishop, Dursley.
Whidborne, John	Charles Small and Harry Arthur Harvie, Bideford, Devon; assigned to Henry Wickens, 1, Christopher Street, Hatton Garden.
Williams, William	William Murray, 5, London Street, City.
Wroe, John Blomely, the younger	John Walker, Manchester; assigned to Joseph Ablett Jesse, Manchester.
Yockney, John	Thomas Moseley, 13, Bedford Street, Covent Garden.
Yonge, John	Robert Shank Atcheson, Duke Street, Westminster; assigned to William Ridge, Duke Street, Westminster; and Henry Rice, 39, Jermyn Street.

## LIST OF NEW PUBLICATIONS.

Chronicles of the Law Officers of Ireland; containing Lists of the Chancellors and Keepers of the Great Seal, Masters of the Rolls, Chief Justices and Judges of the Superior Courts, Attorneys and Solicitors General, with the Serjeants at Law, from the earliest period; Dates and Abstracts of their Patents, Fees, and Allowances from the Crown, and Tenures of Offices. Also a Chronological Table of Promotions, Deaths, or Resignations from the reign of Queen Elizabeth to the present time, with an Outline of the Legal History of Ireland, and copious Indices. By Constantine J. Smith, B.A., of Lincoln's Inn. Price 9s. cloth.

A Practical Guide to Executors and Administrators, designed to enable them to execute the duties of their office with safety and convenience: comprising a Digest of the Law, Stamp Office and other Directions, Forms, Tables of Duties and Annuities: intended also for the use of Attorneys and Solicitors. By Richard Matthews, of the Middle Temple, Esq., Barrister at Law. Second Edition, corrected to the present time. Price 9s.

The Theory and Practice of Conveyancing. By S. Atkinson, Esq. Second Edition. Vol. 1. Price 17. bds.

Archbold's Act for the Amendment of the Poor Laws (4 & 5 W. 4, c. 67), with a Practical Introduction, Notes, and Forms. Fifth Edition. 12mo. Price 8s. bds.

## INCORPORATED LAW SOCIETY.

*Members admitted, June 1839.*

Robert Blackmore, Saint Martin's Place, Trafalgar Square.  
Henry Weeks, Cook's Court, Carey Street.  
Samuel Carter, Birmingham.  
Henry Leman, Lincoln's Inn Fields.  
George John Lloyd, Hatton Court, Threadneedle Street.  
Rowland Nante, Lincoln's Inn Fields.  
Matthew Hale, Ely Place.  
Daniel Boys, Ely Place.  
William Davies, Merthyr Tydfil.

## MASTERS EXTRAORDINARY IN CHANCERY.

*From 21st May to 21st June, 1839, both inclusive, with dates when gazetted.*

Bayly, John Raikes, Devizes, Wilts. June 11.  
Beesley, James, Banbury, Oxford. May 31.  
Herbert, Samuel, Painswick, Gloucester. May 31.  
Hubbard, Thomas, Liverpool. June 4.  
White, James Hobson, Cirencester, Gloucester. June 11.  
Warner, Isaac, Winchester. June 18.

## DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

*From 21st May to 21st June, 1839, both inclusive, with dates when gazetted.*

Hunt, William Clove, and Finch Hunt, Stockport, Chester, Attorneys and Solicitors. May 21.  
Hutchinson, William Johnson, and Ralph Coulthard, Barnard Castle, Durham, Attorneys and Solicitors. May 28.  
Parry, Richard Griffiths, and Joseph Jones, Welchpool, Montgomery, Attorneys, Solicitors and Conveyancers. June 4.

## BANKRUPTCIES SUPERSEDED.

*From 21st May to 21st June, 1839, both inclusive, with dates when gazetted.*

Colnaghi, Martin Henry Lewis Gaetano, Cockspur Street, Charing Cross, Printseller. June 21.  
Fisher, William, Lincoln, and George Fisher, of Newark-upon Trent, Nottingham, Wharfingers, Carriers by Water, Coal Dealers and Plaster Merchants. June 18.  
Gell, Charles, Western Zinc Works, New Road, Zinc Manufacturer. May 31.  
Hickman, William, Rutland Place, Upper Thames Street, Rag Merchant. June 18.  
Schleiermacher, Charles, Coleman Street, London, and of Pearson Street, Kingsland Road, Middlesex, Wool Dealer. June 11.  
Scholes, George, Sheepridge, near Huddersfield, York, Fancy Stuff Manufacturer. June 21.

## BANKRUPTS.

From 21st May to 21st June, 1839, both inclusive, with dates when gazetted.

- Adams, John, George Street, Thrawl Street, Brick Lane, Spitalfields, Feather Merchant, Mattress and Palliass Manufacturer. *Clark*, Off. Ass.; *Hardwick & Co.*, Cateaton Street. May 24.
- Ambrose, William, Awre, Gloucester, Timber Merchant. *Crer*, Verulam Buildings, Gray's Inn; *Cadle*, Newent. June 7.
- Adams, Charles James, Oxford, Auctioneer and Upholsterer. *Cox & Co.*, Lincoln's Inn Fields; *Maley*, Bicester, Oxon; *Brunner*, Oxford. June 11.
- Browne, William Henry, Manchester, Stone and Flag Merchant, and Coal Dealer. *Johnson & Co.*, Temple; *Hitchcock*, Manchester. May 24.
- Bowyer, Edgar, Liverpool, Merchant. *Vincent & Co.*, Temple; *Littledale & Co.*, Liverpool. May 24.
- Butler, James, Deptford Bridge, Deptford, Kent, Wheelwright and Agricultural Implement Maker. *Graham*, Off. Ass.; *Piercy*, Three Crown Square. May 28.
- Beck, John, Kingston-upon-Hull, Spirit Merchant. *Hicks & Co.*, Gray's Inn; *Holden*, Hull. May 28.
- Binney, John, and Thomas Binney, Sheffield, York. Merchants and Factors. *Rodgers*, Devonshire Square, Bishopsgate; *Rodgers & Co.*, Sheffield. June 4.
- Buckley, William Norris, Manchester, Linen Merchant and Commission Agent. *Walmsley & Co.*, Chancery Lane; *Humphreys & Co.*, or *Hampson*, Manchester. June 11.
- Bull, Samuel Allen, Frome Selwood, Somerset, Dyer. *Miller*, Frome Selwood; *Frampton*, Gray's Inn Square. June 11.
- Brewer, John Francis William, Lime Street, London, and Lower Kennington Green, Surrey, Wine Merchant. *Abbott*, Off. Ass.; *Phillips*, Clement's Lane. June 21.
- Barret, Milford, Old Lane Mill, Halifax, York, Corn Miller. *Emmett & Co.*, Bloomsbury Square; Messrs. *Alexander*, Halifax. June 21.
- Chittle, John, Warminster, Wilts, Linen and Woollen Draper. *Holme & Co.*, New Inn; *Chapman*, Warminster. May 24.
- Cope, Edward, Birmingham, Scrivener. *Parkes & Co.*, South Square, Gray's Inn; *Reece*, Birmingham. May 28.
- Chettle, John, Warminster, Wilts, Linen and Woollen Draper. *Holme & Co.*, New Inn; *Chapman*, Warminster. May 28.
- Coombe, John, Bath, Currier. *Pinniger & Co.*, Gray's Inn Square; *Dore*, Bath. June 4.
- Collins, Henry George, Jermyn Street, St. James's, and of Fulham Road, Chelsea, Bookseller, Stationer, and Bookbinder. *Clark*, Off. Ass.; *Harrison*, Walbrook. June 7.
- Cart, Edward, Barton-upon-Humber, Lincoln, Starch and Whiting Manufacturer. *Shaw*, Ely Place; *Richardson*, Hull. June 11.
- Colston, Nicholas, Brixham, Devon, Draper. *Blake & Co.*, Essex Street; *Presswell*, Totnes. June 21.
- Coope, William Pitt, Manchester, Victualler.
- Makinson & Co.*, Temple; *Foden*, Leeds. June 21.
- Dawes, William, Tavistock Street, Covent Garden, Bookseller. *Turquand*, Off. Ass.; *Kearns*, Red Lion Square. May 24.
- Dawson, John, and Edmund Pickup, Manchester, Fustian Manufacturers. *Milne & Co.*, Temple; *Bent*, Manchester. May 31.
- Dickey, Adam, Old Jewey, Linen Factor. *Lackington*, Off. Ass.; *Turner & Co.*, Basing Lane, Bread Street. June 4.
- Davies, Thomas, Lewes, Sussex, Tailor. *Bennett*, Brighton; *Dar & Co.*, Lincoln's Inn Fields. June 18.
- Davis, Mark, and James Davis, Bolton, Lancaster, Timber Merchants. *Clowes & Co.*, King's Bench Walk; *Collis*, Stourbridge. June 21.
- Evans, Evan, Liverpool, Draper. *Milne & Co.*, Temple; *Dent*, Manchester. June 11.
- East, George, and Henry Bulgin, Regent Street, Booksellers and Stationers. *Johnson*, Off. Ass.; *Walker*, Southampton Street, Bloomsbury. June 14.
- Eldridge, William, Milton Street, Middlesex, Victualler. *Lackington*, Off. Ass.; *Harpur*, Kennington Cross. June 14.
- Fulton, William, and Lumsden Fulton, Rochdale, Lancaster, Cotton Spinners. *Makinson & Co.*, Temple; *Atkinson & Co.*, Manchester. May 24.
- Farnworth, Charles, Dowgate Wharf, Upper Thames Street, Tin Plate Merchant. *Belcher*, Off. Ass.; *Pulling*, Hare Court, Temple. May 31.
- Farr, William Clark, Frederick Street, Vincent Square, Westminster, Victualler. *Groom*, Off. Ass.; Messrs. *Pollock*, Red Lion Square. June 4.
- Fenton, Charles, Clement's Lane, Lombard Street, Plumber and Glazier. *Groom*, Off. Ass.; *Holme & Co.*, New Inn. June 21.
- Gowar, Thomas, and William Dean Gowar, Blackheath Road, Greenwich, Kent, Coach Makers. *Lackington*, Off. Ass.; *Holmer*, Bridge Street, Southwark. May 24.
- George, Benjamin, New Sarum, Wilts, Common Brewer, Malster and Coal Merchant. *Walker*, Southampton Street, Bloomsbury; *Alford*, New Sarum. May 28.
- Geach, William Foster, Pontypool, Monmouth, Corn and Timber Merchant. *White & Co.*, Bedford Row; *Bevan & Co.*, Bristol. May 28.
- Grove, Henry, and Charles Grove, Birmingham, Grocers. *Bigg & Co.*, Southampton Buildings; *Haywood & Co.*, Birmingham. May 31.
- Graham, Richard, Cheltenham, Gloucester, Linen Draper. *Currie & Co.*, Lincoln's Inn; *Lediard*, Cirencester. June 11.
- Grist, John, New Brentford, Middlesex, Grocer. *Whitmore*, Off. Ass.; *Hoaker*, Bartlett's Buildings. June 18.
- Gummer, Joseph Channing, Hart Street, Mark Lane, London Wine Merchant. *Pennell*, Off. Ass.; *Murray*, London Street, Fenchurch Street. June 18.
- Hickman, Henry, Sedgley, and of Darlaston, Stafford, Builder, Retail Brewer and Coal Master. *Brown*, Bilston; *Williamson & Co.*, Verulam Buildings, Gray's Inn. May 24.

- Harris, John Noyes, and Robert Allen Ellis, High Holborn, Woollen Drapers. *Whitmore*, Off. Ass.; *Car*, Bucklersbury. May 28.
- Hall, Charles, Hanley, Stoke-upon-Trent, Stafford, Engraver. *Litchfield & Co.*, Chancery Lane; *Brown*, Hanley. June 7.
- Hudson, Thomas, Lime Street, London, Drysalter. *Alsager*, Off. Ass.; *Bartholomew*, Gray's Inn Place. June 11.
- Henderson, James Macbraire, Liverpool, Wine and Spirit Merchant. *Crump & Co.*, Liverpool; *Battye & Co.*, Chancery Lane. June 11.
- Holdsworth, James, Bradford, York, Worsted Spinner. *Hawkins & Co.*, New Boswell Court; *Wells*, Bradford. June 11.
- Hargrave, Edward James, Bishopsgate Street Without, London, Victualler. *Green*, Off. Ass.; *Miller & Co.*, Bedford Row. June 18.
- Hedgcock, Thomas, South Lambeth, Surry, Ship Owner and Merchant. *Gibson*, Off. Ass.; *Hadwen*, Salisbury Square, Fleet Street. June 18.
- Hartland, Robert, Staunton, Worcester, Mealman and Farmer. *Jones*, Ledbury; *King & Co.*, Serjeant's Inn, Fleet Street. June 18.
- Howard, Thomas, Bury, Cotton Spinner and Manufacturer. *Clark & Co.*, Lincoln's Inn Fields; Messrs. *Grundy*, Bury. June 21.
- Irving, Thomas Wheatley, Halifax, York, Dyer and Finisher. *Jaynes & Co.*, Ely Place; *Edwards*, Halifax. May 24.
- Jones, John, Spitalfields Market, Licensed Victualler. *Alsager*, Off. Ass.; *Gaitshell*, Stamford Street, Blackfriars' Road. May 31.
- Johnson, John Goode, Nether Langwith, Cuckney, Nottingham, Draper and Grocer. *Austen & Co.*, Raymond Buildings, Gray's Inn; *Percy & Co.*, Nottingham. May 31.
- Johnston, Jane, Manchester, Bed Tick Manufacturer. *Adlington & Co.*, Bedford Row; *Gaskell*, Wigan. May 31.
- Jones, John, Chepstow, Monmouth, Wine and Timber Merchant. *Bevan & Co.*, Bristol; *White & Co.*, Bedford Row. June 4.
- Jackson, John, Westbury-upon-Severn, Gloucester, Drover and Cattle Dealer. *Nicholls*, Cook's Court, Lincoln's Inn; *Lovegrove*, Gloucester. June 11.
- Jeffs, John, Saint James's Place, Saint James's Street, Westminster, Hair Dresser and Perfumer. *Graham*, Off. Ass.; *Robinson & Co.*, Charter-house Square. June 21.
- Keens, William, Bedford Place, Commercial Road, Button and Trimming Seller. *Gibson*, Off. Ass.; *Phipps*, Weaver's Hall, Basinghall Street May 24.
- Knight, Henry, Reading, Berks, Brewer. *Toulmin*, Old Jewry. June 7.
- Knibb, Edward, Liverpool, Tailor. *Phillips*, Bucklersbury; *Partridge*, Birmingham. June 18.
- Litherland, Nathan, Liverpool, Merchant. *Willis & Co.*, Tokenhouse Yard; *Mason*, Liverpool. June 14.
- Martin, William, Union Street, Southwark, Carrier and Leather Seller. *Cannan*, Off. Ass.; *Parker*, St. Paul's Church Yard. May 21.
- McGill, William, Liverpool, Draper. *Robinson*, Liverpool; *Vincent & Co.*, Temple. May 21.
- Maxwell, William Hamilton, Portrush, Antrim, Ireland, Bookseller. *Abbott*, Off. Ass.; *Lacy & Co.*, King's Arms Yard, Coleman Street. May 24.
- Moore, William, Newark-upon-Trent, Nottingham, Innkeeper. *Falkner*, Newark-upon-Trent; *Capes & Co.*, Bedford Row. May 24.
- Murry, John Money, Gorleston, near Great Yarmouth, Suffolk, Merchant. *Clark & Co.*, Lincoln's Inn Fields; *Beckwith & Co.*, Norwich. May 31.
- Martin, James, Waterloo Place, Limehouse, and Martha Hall of the same place, Linen Drapers and Haberdashers. *Gibson*, Off. Ass.; *Overbury*, Friday Street. June 21.
- Newsome, James, Tong, Birstall, York, Worsted Stuff Manufacturer. *Lawrence & Co.*, Old Fish Street, Doctors' Commons. June 18.
- Newell, John, Shibden, Halifax, York, Worsted Manufacturer. *Richards & Co.*, Lincoln's Inn Fields; *Barber*, Brighouse, near Halifax. June 18.
- Pierce, John, Birmingham, Thimble Manufacturer. *Taylor & Co.*, Bedford Row; Messrs. *Ryland*, Birmingham. May 24.
- Potts, Thomas, Birmingham, Metallic Tube Maker and Brass Founder. *Adlington & Co.*, Bedford Row; *Marshall* or *Harrison*, Birmingham. May 24.
- Poynter, Thomas, Aldgate, High Street, London, Butcher. *Johnson*, Off. Ass.; Messrs. *Buddely*, Leman Street, Goodman's Fields. May 28.
- Parker, Edward, Piccadilly, Perfumer. *Green*, Off. Ass.; *Knight*, Pantion Street, Haymarket. June 4.
- Pope, James, Tor, Tormoham, Devon, Builder. *Carter*, Exeter; *Adlington & Co.*, Bedford Row. June 7.
- Penn, John Denston, and Edwin Penn, Northampton, and of Fleet Street, London, Shoe Manufacturers and Shoe Sellers. *Hensman*, Northampton; *Turner & Co.*, Basing Lane, Cheapside. June 7.
- Peck, George, Blackfriars' Road, Linen Draper and Hosier. *Turquand*, Off. Ass.; *Lloyd*, Cheapside. June 14.
- Patchett, Thomas, Brighouse, Halifax, York, Worsted Manufacturer. *Battye & Co.*, Chancery Lane; *Higham*, Brighouse. June 14.
- Peachey, Thomas, Brighton, Sussex, Draper. *Johnson*, Off. Ass.; *Bartlett & Co.*, Nicholas Lane. June 21.
- Ruffell, Samuel, Greenwich, Kent, Linen Draper. *Cannan*, Off. Ass.; *Hardwick & Co.*, Cateaton Street. May 31.
- Rodgers, John, Hylton Ferry, Durham, Ship Builder. *Swain & Co.*, Frederick's Place, London; *Young*, Bishopwearmouth. May 31.
- Reynolds, Martha, and John Mason Knight, Rugby, Warwick, Ironmongers, Grocers, Seedsman, Chandlers, and General Dealers. *Wratislaw*, Rugby; *Benn*, Rugby; *Fuller & Co.*, Carlton Chambers, Regent Street. May 31.
- Runcorn, John, Charlton-upon-Medlock, Manchester, Cotton Spinners. *Milne & Co.*, Temple; *Slater & Co.*, Manchester. June 4.
- Robbins, William, Birmingham, Spoon Manufac-

- turer. *Anory & Co.*, Throgmorton Street; *Parkes & Co.*, Birmingham. June 11.
- Rideout, Thomas Hardwick, and William Batho, Manchester, Stuff Merchants. *Makinson & Co.*, Temple; *Atkinson & Co.*, Manchester. June 14.
- Rhodes, Joseph, Denton, Lancaster, Merchant. *Spinks*, John Street, Bedford Row. *Redfern*, Oldham, near Manchester. June 14.
- Rowbotham, John, Bollington, Chester, Wheelwright. *Williamson & Co.*, Verulam Buildings, Gray's Inn, *Wormald*, Macclesfield. June 18.
- Smith, John, Liverpool, Lancaster, Boiler Maker. *Worthington & Co.*, Liverpool; *Taylor & Co.*, Bedford Row. May 24.
- Sherley, William, Staines, Middlesex, Dealer in Horses. *Clark*, Off. Ass.; *Sandford*, Adelphi Terrace. May 28.
- Smith, Thomas Seddon, Liverpool, Brewer. *Grocott*, Liverpool; *Dean*, Essex Street, Strand. May 31.
- Stelfox, James, Manchester, Grocer. *Johnson & Co.*, Temple; *Hitchcock*, Manchester. June 4.
- Shirrefs, David, Bishopwearmouth, Sunderland, Innkeeper. *Meggison & Co.*, King's Road, Bedford Row; *Kidson & Co.*, or *Reed*, Sunderland. June 11.
- Spincer, Robert, North Stoneham, Southampton, Cattle Salesman. *Patterson*, Southampton; *Bridger*, Finsbury Circus. June 11.
- Stow, Joseph, Charles Place, York Road, Lambeth, Surrey, Draper. *Edwards*, Off. Ass.; *Jones*, Size Lane. June 14.
- Spencer, Thomas, Alcaster Selby, York, Farmer. *Lever*, King's Road, Bedford Row; *Thompson*, York. June 18.
- Taylor, John, Albion Wharf, Maiden Lane, King's Cross, Middlesex, Stone Merchant and Wharfinger. *Pennell*, Off. Ass.; *Batho*, America Square. May 21.
- Till, Joseph, Newhill, otherwise Newhall, Derby, Earthenware Manufacturer. *Fearnhead*, Ashby de la Zouch; *Johnson & Co.*, Temple. May 28.
- Taylor, Edmund, Liverpool Drysalter. *Holden & Co.*, Liverpool; *Walmsley & Co.*, Chancery Lane. June 4.
- Tompkins, Henry, Bromyard, Hereford, Victualler. *Douglas & Co.*, Verulam Buildings, Gray's Inn; *Taylor*, Bromyard. June 4.
- Upton, John, and James Nickolls, Sun Wharf, Battersea, Engineers and Machinists. *Cannan*, Off. Ass.; *Tanner*, Pudding Lane. June 21.
- Wright, Smith, Walton, Norfolk, Grocer. *Bell & Co.*, Bow Church Yard; *Pillans*, Swaffham. May 24.
- West, John Lambert, Charles Street, Soho, Victualler. *Green*, Off. Ass.; *Branscomb*, Wine Office Court, Fleet Street. May 24.
- Waring, Richard, Luton, Bedford, Grocer, Tallow Chandler, and Ironmonger. *Gibson*, Off. Ass.; *Sharp*, Devonshire Place, New Road. May 24.
- Wright, Smith, Watton, Norfolk, Grocer. *Bell & Co.*, Bow Church-Yard; *Pillans*, Swaffham. May 24.
- Williams, Mary, Old Bailey, London, Eating-house keeper. *Abbott*, Off. Ass.; *M'Duff*, Castle St., Holborn. June 11.
- Wrigley, Watts, and Thomas Wrigley, Holmfeld Mills, Ovenden, Halifax, York, Silk Waste Spinners and Worsted Spinners. *Richards & Co.*, Lincoln's Inn Fields; *Stocks & Co.*, Halifax. June 11.
- Williams, Llewellyn Watkins, late of the Old Bailey, London, afterwards of the Rotunda, Blackfriars' Road, Surrey, and now of the Colosseum Café, Albany Street, and of Flora Cottage, Augusta Road, Regent's Park, Middlesex, Wine Merchant. *M'Duff*, Castle Street, Holborn. June 14.
- Webster, James, and Robert Brown, Liverpool, Fringe and Lace Manufacturers. *Chester*, Staple Inn; *Cort*, Liverpool. June 18.
- Withey, George, Bristol, Grocer. *Johnson & Co.*, Temple; *Gooden*, Bristol. June 18.
- Winskill, John, James Harwood, and John Hutchinson, Barnard Castle, Durham, Carpet Manufacturers. *Smithson & Co.*, Southampton Buildings; *Barnes*, Barnard Castle. June 18.

## PRICES OF STOCKS.

Tuesday, 25th June, 1839.

Bank Stock, div. 7 per Cent. - - - - -	189 a 8½
3 per Cent. Reduced - - - - -	91½ a ¼ a ¾ a ½
3½ per Cent. Reduced Annuities - - -	98½ a 9¼ a 9
New 3½ per Cent. Annuities for Opg. 17th July,	100½ a ½
Long Annuities, expire 5th Jan. 1860	14½ a ¾ a ½
Annuities for 30 yrs., exp. 10th Oct. 1859 - - -	14
India Bonds, 3 per Cent. - - - - -	12s. pm.
3 per Cent. Cons. for Opg. 17th July	92½ a 3½ a ½ a 3 a ½
Exchequer Bills, 1000l. a 2d. and 1¼d.	10s. a 15s. pm.
Do. 500l. a 2d. and 1¼d. - - - - -	15s. a 20s. pm.
Do. Small, a 2d. & 1¼d. - - - - -	10s. a 15s. a 20s. pm.

# The Legal Observer.

SATURDAY, JULY 6, 1839.

— "Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## LETTERS TO THE EDITOR, ON THE STATE OF THE BENCH AND THE BAR.

### LETTER I.

#### ON THE ADMINISTRATION OF EQUITY.

Sir,

If you, in your corporate capacity of Editor and Censor of the Profession, have a fault, permit me to say it is that you are too little given to censure. You bear the sword, it is true, but you rarely unsheath it; and when you do, you return it as quickly as possible into the scabbard. You cannot be ignorant, I am persuaded, of the real state of the profession,—its shadows as well as its lights; but I think you are a little too fearful of dwelling on the former. I trust you will allow me, therefore, to approach them with due boldness—to expose to view the evils under which we labour; and thus possibly to enable you to render a new service both to the profession and the public. I respect the feeling which prompts your silence. With you I reverence the Bench,—I delight in the Bar,—but I cannot be altogether silent as to their faults; and it is your duty, allow me to say, as the watchful guardian of the profession, to make it acquainted with itself, and like a true friend to shew it where it is wrong; that, if knowing them, early time may be taken to amend them; if ignorant of them, that this may be pleaded no longer as an excuse; and thus I propose to

—"Modestly discover to yourself  
That of yourself which yet you know not of."

I propose then, Sir, with your permission, to use this Vacation in calling your attention to sundry matters touching our com-  
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mon weal, that during its repose and leisure we may well weigh them, and possibly amend such as be faulty; and this I shall do, albeit with respect, yet with no mincing or faltering hand.

First let me turn to our Courts of Equity. Another labourer in the field has done good service as to the arrears in these Courts. His steps I humbly follow as to the mode in which equity is there administered.

There are two modes of administering Equity now in vogue, which differ entirely from each other. In one Court the goddess walks slipshod, her zone all unbound, her garments loose, perhaps to negligence. In the other she is laced much too tight, her eyes are starting out of her head from her eagerness to see; her pace is crippled and limping, and she is in a constant fidget lest she should be imposed on. In one Court, let but the parties agree, and the desire is to make everybody comfortable: in the other, the word "consent" is only a signal to the Judge to be particularly on his guard. In the former, a cheerful nod settles the business, and cuts a long story short: in the latter, the shortest way is held to be the longest way round. The one Judge takes every thing to be "all right:" the other takes every thing to be "all wrong." This grants the premises, but perhaps quarrels with the conclusion: that admits the conclusion, but denies the premises. The one is delighted if he can do what is wanted: the other has a melancholy satisfaction when every one else is dissatisfied. This agrees with reluctance: that dissents with regret. The one impedes opposition: the other opposes acquiescence.

Let me take an instance or two. Allow me transport you to Court I.

M

*Counsel.*—This, Sir, is an unopposed petition, and is quite of course. Mr. Sniggers consents for the infant.

Mr. *Sniggers*.—I appear, Sir, for the infant in this case; and although I am instructed to submit my rights to the Court, yet I may perhaps be permitted to say—

*Judge I.*—I thought this was unopposed. I see no difficulty in making the order.

Mr. *Sniggers*.—If your Honor sees no difficulty, of course I wish to make none; but it appears to me—

*Judge I.*—What is it you want?—(In an under tone to the Registrar) I suppose he wants to make a speech. (Aloud) Take the order. Call the next.

Now let me turn to the other Court—Court II.

*Counsel.*—This, my Lord, is an unopposed petition—

*Judge II.*—Stop a moment, if you please. Who appears for the other parties?

*Counsel.*—My Lord, Mr. Double-brief appears.

*Judge II.*—Where is Mr. Double-brief?

*Counsel.*—My Lord, he was here this moment. He instructed me to say that he consented; and perhaps—

*Judge II.*—I can't go on in this way. All the parties must be properly represented.

*Counsel.*—It is quite of course, My Lord, Mr. Double-brief is engaged in the other Court.

*Judge II.*—Quite of course! I don't think it is quite of course. How do I know Mr. Double-brief consents at all? You may mention it again when he comes in. Call the next!

Let us take another matter in the same Court.

*Counsel.*—In this cause, my Lord, Thomas Oystershell is the plaintiff, and William Oystershell is the defendant. The case of *Oystershell v. Oystershell* has been before your Lordship a very long time, and the fund in Court, although once very considerable, is now reduced to twopence and a fraction. The object of the parties is now to have this fund paid out and divided equally between the parties. All parties agree.

Mr. *Trundle*.—I appear for William Oystershell, and consent.

*Judge.*—Where is a copy of the will. I feel some difficulty in this case. Let me have a copy of the will left with my Secretary, and I will see what can be done.

How different from what follows:

Court I. again.

*Counsel.*—This is the cause of *Neverwin v. Everlose*, and we now want the common order for taxation of costs of all parties as between solicitor and client. But we have some difficulty as to who shall pay them. It has been thought right that they should come out of the general fund.

Mr. *Verigreen*.—I appear for Mr. Everlose, and consent.

*Judge.*—Well, if you all agree among yourselves, I shall make the order.

Here I close my account of these two Courts. Perhaps if "the two single Judges were rolled into one," the mixture might improve both. The one Court I might call Court *Allegro*—the other Court *Penseroso*. Here we have

"Nods and becks, and wreathed smiles,  
Such as hang on Hebe's cheek;"

While there I find Equity

"Sober, stedfast and demure,  
All in a robe of darkest grain."

I trust, however, I have treated them with all respect. My wish is to

"Carve them as a dish fit for the gods;  
Not hew them, as a carcase fit for hounds."

And by a little good-humoured raillery to point out small defects.

But the important point to the profession is that the Equity in the one Court is quite different from that in the other. A bill is drawn or a motion is made, not with reference to its own merits, but to the Judge who is to decide it. Hence ensues an unsettled practice, a dissatisfied Bar, and oftentimes an unhappy suitor.

I have begun with this as, perhaps, the mildest of my budget of grievances. The box once open, others more serious remain. They come upon me in imagination, each demanding attention, and with your help, Sir, they shall have it. I will not believe that the state is radically unsound; but there is some bad timber in the building. Let us take care that it contaminate not the rest. Some anti-dryrot mixture is wanted, which I purpose to administer.

I am, Sir,

Your most obedient servant,

T———.

July 3, 1839.

[The one Judge, we presume, relies that the Registrar will see that all the facts are verified, and the proper parties represented before the Court, and the other Judge chooses to look into these details himself.—  
ED. L. O.]

## PARLIAMENTARY NOTICES.

## NON-PAROCHIAL REGISTRIES.

WE have already laid before our readers the Report of the Commissioners appointed to inquire into the state of non-parochial registries (17 L. O. 65, 71,) which is of considerable value as to the admissibility in evidence of this mass of documents, and a bill has been introduced in the present session for the purpose of carrying its recommendations into effect. This we have also given (17 L. O. 307). Its object is to deposit all the best description of non-parochial registries of births, deaths and marriages in the General Register Office, and to enact that the registers shall be deemed in legal custody, and shall be receivable in evidence in all courts of justice, subject to the provisions contained in the intended act. We doubt, however, whether this act should be made to extend to the registrar of the Quakers. It is admitted in the Report of the Commissioners "that they exhibit an admirable specimen of the state to which order and precision may be carried in the classification and arrangement of records of this description" (17 L. O. 69); and it is to be observed that they have not only a complete machinery for the purpose, but a registering officer recognized by the act for the Registration of Births, Deaths and Marriages, 6 & 7 W. 4, c. 16, ss. 30 & 31; and as these local registries are established throughout the country, and are quite satisfactory to the parties, we do not think there is a sufficient reason for disturbing them and removing them all to a central office, thus giving the parties desirous of making searches, much additional expense and trouble. It is to be observed that the registries of the Quakers are the only ones belonging to any branch of Protestant Dissenters which are complete, as they have registered marriages as well as births and deaths. They stand much on the same footing as registrars of the Church of England and the Jews, which it is not intended to disturb.

## DIVORCE BILLS.

An important change has very recently been made in the practice of the House of Commons with respect to divorce bills. In former sessions, and in a part of the present session, the committee on the bill used to be a committee of the whole house, and the evidence was taken before it. This has long been complained of, to say the least

of it, as a very inconvenient and unsatisfactory course, and bills of this nature are now referred to a private committee, consisting of members connected with the bill, and certain selected legal members of the House; and we understand that where the bill is unopposed, and there is no doubt as to the facts, the course has been not to call the witnesses again before the committee, but to take the printed evidence before the House of Lords as sufficient. In the ensuing session, we believe that it is intended to make some further alteration as to these bills.

## THE COPYHOLD ENFRANCHISEMENT BILL.

The Copyhold Bill was read a third time in the House of Commons on Wednesday, and is now fairly landed in the House of Lords. As it is little more than a permissive bill, we think there is every probability of its passing into a law in the present Session. It is only an instalment of what is due; but still, as it stands, we anticipate many beneficial results from it. We shall advert more fully to it in our next.

## OBJECT OF THE BANKRUPT LIABILITY BILL.

THE bill now in committee of the House of Commons, is the same bill as that printed p. 146, *ante*, "for the better Protection of Parties dealing with Persons liable to the Bankrupt Laws;" except that in the 1st section the following addition is made:—"or to any execution founded on a judgment on a warrant of attorney or cognovit, given by any bankrupt by way of such fraudulent preference."

It may be useful to observe that the 81st section of 6 G. 4, c. 16, is the same as the proposed enactment, except that there contracts and other dealings and transactions were rendered valid which took place "more than *two calendar months* before the issuing of the commission;" whilst in the present bill the words are "before the date and issuing of the fiat;" and except also that *conveyances* are not included in the present bill. By Sir Edward Sugden's Act, 2 Vict. c. 11, s. 12, (for which see p. 117, *ante*,) *bond fide* conveyances, before the date and issuing of the fiat, are protected; but that act does not apply to contracts and other dealings according to the 6 G. 4, c. 16; and the present bill is therefore evidently intended to extend the benefit of the recent act.



## PRACTICAL POINTS OF GENERAL INTEREST.

## LIABILITY OF EXECUTOR AND TRUSTEE.

AN executor will be guilty of a devastavit if he applies the assets in payment of a claim which he is not bound to satisfy. Com. Dig. Administration (I. 1); *Vez v. Emery*, 5 Ves. 141; as if he makes disbursements in the schooling, feeding, or clothing of the children of the deceased subsequently to his decease. *Giles v. Dyson*, 1 Stark. N. P. C. 32. So if he pays a bond, founded on a usurious contract, or a bond *ex turpi causa*, such payment will amount to a devastavit as well against legatees as creditors. *Winchcombe v. Bishop of Winchester*, Hobart, 167. So if the testator was bound in a joint obligation, and he dies before the co-obligor, the executor is not liable on the instrument at law; and therefore, if he pays the sum due upon it, he will be guilty of a devastavit. But the executor is not bound to plead the Statute of Limitations to an action commenced against him by a creditor of the testator. *Norton v. Tucker*, 1 Atk. 526. Thus, if the surplus of the personal estate after payment of the debts and legacies, be bequeathed to a residuary legatee and several creditors, although barred by the Statute of Limitations, commence actions against the executor, equity will not, on his refusal to plead the statute, compel him to plead it in favour of the residuary legatee. *Ex parte Dewdney*, 15 Ves. 498. But under the common decree in an administration suit, a creditor applied to prove a debt which was barred by lapse of time, and the executor refusing to interfere, the plaintiff, a residuary legatee, insisted upon setting up the objection of the statute: it was held, that it was competent for the plaintiff or any other person interested in the fund, to take advantage of the statute before the Master, notwithstanding the refusal of the executor. *Shewen v. Vanderhorst*, 1 Russ. & M. 349; 2 Russ. & M. 75. See 2 Wms. on Exors, p. 1278. It has very recently been held by Lord Langdale, M. R., that a trustee for a married woman having received notice of a charge executed by her, was held personally liable for payments afterwards made to her, and that notwithstanding the validity of the charge was disputed by her, and no application had been made for an injunction. *Hodgson v. Hodgson*, 2 Keen, 704.

CHANGES IN THE LAW  
IN THE PRESENT SESSION OF PARLIAMENT.

## No. II.

2 Vict. c. 12.

## SEDITIONOUS SOCIETIES AND PUBLICATIONS.

*An Act to amend an Act of the thirty-ninth year of King George the Third, for the more effectual Suppression of Societies established for seditious and treasonable purposes, and for preventing treasonable and seditious practices, and to put an end to certain proceedings now pending under the said act.*

[4th June, 1839.]

1.—39 G. 3, c. 79. *Repeal of 39 G. 3, c. 79, s. 27.*—Whereas in an act passed in the thirty-ninth year of the reign of King George the Third, intituled “An act for the more effectual suppression of societies established for seditious and treasonable purposes, and for the better preventing treasonable and seditious practices,” certain provisions are contained to restrain the printing or publishing of any papers or books whatsoever, which should be meant or intended to be published or dispersed, without the name and place of abode of the printer thereof being printed thereon in manner in the said act specified. And whereas the said provisions have given occasion to many vexatious proceedings at the instance of common informers, and it is expedient to discourage the same: Be it therefore enacted by the Queen’s most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that so much of the said act as enacts that every person who after the expiration of forty days after the passing of the said act, shall print any paper or book whatsoever which shall be meant or intended to be published or dispersed, whether the same shall be sold or given away, shall print upon the front of every such paper, if the same shall be printed on one side only, and upon the first and last leaves of every paper or book which shall consist of more than one leaf, in legible characters, his or her name, and the name of the city, town, parish, or place, and also the name if any of the square, street, lane, court, or place in which his or her dwelling house or usual place of abode shall be, and that every person who shall omit so to print his name and place of abode on every such paper or book printed by him, and also every person who shall publish or disperse, or assist in publishing or dispersing, either gratis or for money, any printed paper or book which shall have been printed after the expiration of forty days from the passing of the said act, and on which the name and place of abode of the person printing the same shall not be printed as aforesaid, shall for every copy of such paper so published or dispersed by him forfeit and pay the sum of twenty pounds, shall be and the same is hereby repealed.

2. *Penalty upon printers for not printing their name and residence on every paper or book; and on persons publishing the same. Proviso.*

—And be it enacted, that every person who after the passing of this act, shall print any paper or book whatsoever, which shall be meant to be published or dispersed, and who shall not print upon the front of every such paper, if the same shall be printed on one side only, or upon the first or last leaf of every paper or book which shall consist of more than one leaf, in legible characters, his or her name and usual place of abode or business, and every person who shall publish or disperse, or assist in publishing or dispersing, any printed paper or book on which the name and place of abode of the person printing the same shall not be printed as aforesaid, shall for every copy of such paper so printed by him or her forfeit a sum of not more than five pounds: Provided always, that nothing herein contained shall be construed to impose any penalty upon any person for printing any paper excepted out of the operation of the said act, either in the said act or by any act made for the amendment thereof.

3. *As to books and papers printed at the University presses.*—And be it enacted, that in the case of books or papers printed at the University press of Oxford, or the Pitt press of Cambridge, the printer, instead of printing his name thereon, shall print the following words: "Printed at the University Press, Oxford," or "The Pitt Press, Cambridge," as the case may be.

4. *No actions for penalties to be commenced except in the name of the attorney or solicitor general in England, or the Queen's advocate in Scotland.*—Provided always, and be it enacted, that it shall not be lawful for any person or persons whatsoever to commence, prosecute, enter, or file, or cause or procure to be commenced, prosecuted, entered, or filed, any action, bill, plaint, or information in any of her Majesty's courts, or before any justice or justices of the peace, against any person or persons, for the recovery of any fine, penalty, or forfeiture made or incurred, or which may hereafter be incurred under the provisions of this act, unless the same be commenced, prosecuted, entered, or filed in the name of her Majesty's Attorney General or Solicitor General in that part of Great Britain called England, or her Majesty's Advocate for Scotland (as the case may be respectively); and if any action, bill, plaint, or information shall be commenced, prosecuted, entered, or filed in the name or names of any other person or persons than is or are in that behalf before mentioned, the same, and every proceeding thereupon had, are hereby declared and the same shall be null and void to all intents and purposes.

5. *Persons sued before the passing of this act for penalties incurred under the recited act, may apply to the Court or to a Judge to stay proceedings upon certain conditions.*—And be it enacted, that immediately after the passing of this act it shall be lawful for any person against whom any original writ, suit, action, bill, plaint, or information shall have been sued out, commenced, or prosecuted, on or before the

day of the passing of this act, for the recovery of any pecuniary penalty or penalties incurred under the said recited act, to apply to the court in which such original writ, suit, action, bill, plaint, or information shall have been sued out, commenced, or prosecuted, if such court shall be sitting, or if such court shall not be sitting, to any judge of either of the superior courts at Westminster, or to any justice of the peace before whom any such plaint or information shall be pending or any conviction shall have been had or obtained, or to any other justice of the peace acting for the same county, riding, division, city, borough, or place, as the justice of the peace before whom such plaint or information shall be pending or such conviction shall have been had or obtained, for an order that such writ, suit, action, bill, plaint or information shall be discontinued, or such conviction be quashed, upon payment of the costs thereof out of pocket incurred to the time of such application being made, such costs to be taxed according to the practice of such court, or in case of any proceeding before a justice, to be taxed and ascertained by such justice; and every such court or judge, or justice of the peace, as the case may be, is hereby authorized and required, upon such application, and proof that sufficient notice has been given to the plaintiff or informer, or to his attorney, of the application, to make such order as aforesaid; and upon the making such order, and payment or tender of such costs as aforesaid, such writ, suit, action, bill, plaint, or information shall be forthwith discontinued, or such conviction shall be quashed, as the case may be: Provided always, that in all cases in which any such writ, suit, action, bill, plaint, or information shall have been sued out or commenced subsequently to the sixteenth day of April one thousand eight hundred and thirty-nine, it shall be lawful for such court, judge, or justice as aforesaid to make such order for discontinuing the same, or quashing any conviction had thereon, without payment of any costs; and in every such case, on the making of such order, such writ, suit, action, bill, plaint, or information shall be forthwith discontinued, or such conviction shall be forthwith quashed, as the case may be: Provided always, that nothing herein contained shall be deemed or taken to enable any person to recover back any money paid before the passing of this act in pursuance of any judgment or conviction duly obtained under the provisions of the said recited act.

6. *Former acts and this act to be construed as one act.*—And be it enacted, that the said act, and all acts made for the amendment thereof, except so far as herein repealed or altered, shall be construed as one act together with this act.

7. *Act may be amended.*—And be it enacted, that this act may be amended or repealed by any act to be passed in this present session of parliament.

## NEW BILLS IN PARLIAMENT.

## LETTERS PATENT ACT AMENDMENT.

This bill recites the 5 & 6 W. 4, c. 83, by which it is enacted that if any person having obtained any letters patent as therein mentioned, shall give notice as thereby required of his intention to apply to his Majesty in council for a prolongation of his term of sole using and vending his invention, and shall petition his Majesty in council to that effect, it shall be lawful for any person to enter a caveat at the council office, and if his Majesty shall refer the consideration of such petition to the Judicial Committee of the Privy Council, and notice shall be first given to any person or persons who shall have entered such caveats, the petitioner shall be heard by his counsel and witnesses to prove his case, and the persons entering caveats shall likewise be heard by their counsel and witnesses, whereupon, and upon hearing and enquiry of the whole matter, the Judicial Committee may report to his Majesty that a further extension of the term in the said letters patent shall be granted, not exceeding seven years, and his Majesty is thereby authorised, and empowered, if he shall think fit, to grant new letters patent for the said invention for a term not exceeding seven years after the expiration of the first term, any law, custom or usage to the contrary notwithstanding; provided that no such extension shall be granted if the application by petition shall not be made and prosecuted with effect before the expiration of the term originally granted in such letters patent: And reciting that it has happened since the passing of the said act, and may again happen, that parties desirous of obtaining an extension of the term granted in letters patent of which they are possessed, and who may have presented a petition for such purposes in manner by the said recited act directed, before the expiration of the said term, may nevertheless be prevented by causes over which they have no control from prosecuting with effect their application before the Judicial Committee of the Privy Council; and it is expedient therefore that the said Judicial Committee should have power, when under the circumstances of the case they shall see fit, to entertain such application, and to report thereon, according to the provisions of the said recited act, notwithstanding that before the hearing of the case before them the terms of the letters patent sought to be renewed or extended may have expired: be it therefore enacted that so much of the said recited act as provides that no extension of the term of letters patent shall be granted as therein mentioned if the application by petition for such extension be not prosecuted with effect before the expiration of the term originally granted in such letters patent, shall be and the same is hereby repealed.

2. That it shall be lawful for the Judicial Committee of the Privy Council, in all cases where it shall appear to them that any application for an extension of the term granted by any letters patent, the petition for which extension shall have been referred to them for

their consideration, has not been prosecuted with effect before the expiration of the said term from any other causes than the neglect or default of the petitioner, to entertain such application, and to report thereon as by the said recited act provided, notwithstanding the term originally granted in such letters patent may have expired before the hearing of such application; and it shall be lawful for her Majesty, if she shall think fit, on the report of the said Judicial Committee recommending an extension of the term of such letters patent, to grant such extension, or to grant new letters patent for the invention or inventions specified in such original letters patent, for a term not exceeding seven years after the expiration of the term mentioned in the said original letters patent: provided always that no such extension or new letters patent shall be granted if the petition for the same shall not have been presented as by the said recited act directed before the expiration of the term sought to be extended, nor unless sufficient reason shall be shown to the satisfaction of the said Judicial Committee for the omission to prosecute with effect the said application by petition before the expiration of the said term.

## NOTICES OF NEW BOOKS.

*Chronicle of the Law Officers of Ireland, containing Lists of the Lord Chancellors and Keepers of the Great Seal, Masters of the Rolls, Chief Justices and Judges of the Courts of King's Bench, Common Pleas, and Exchequer, Attorneys, and Solicitors General, with the Serjeants at Law, from the earliest period; Dates and Abstracts of their Patents; Fees and Allowances from the Crown, Tenures of Offices, References to the Records, and Patents of Precedence. Also a Chronological Table of the Law Officers, with the Promotions, Deaths, or Resignations, from the Reign of Queen Elizabeth to the present time. Judges' Salaries in 1690, and as fixed by the 2 & 3 W. 4. with an Outline of the Legal History of Ireland, and Copious Indexes.* By Constantine J. Smyth, B. A. London: H. Butterworth.

We think this is a useful work, and great pains and research have evidently been taken in its compilation. Mr. Smyth states in his preface that:—

“The design of this volume is to supply such information in this neglected portion of Irish history as will enable the profession, and the historical and antiquarian student, to ascertain with correctness the names of the Great Law Officers of Ireland, and the times in which they flourished. Whilst reference in ecclesiastical

history and in the peerage has been rendered easy and familiar by the numerous memoirs and statistical works which illustrate those departments, it is, to say the least, singular, that no list of the Irish Judges has been published, and it certainly cannot be accounted for, on the ground that the power and influence exercised by them, and attached to their stations, were less felt and acknowledged by the various classes of society, or that the individuals who filled those offices and successively presided in the Irish Courts of Law, played a less important part in the general history of the country; although an attempt is made in the present work to remedy the deficiency, and give correct lists of the Judges and law officers of the Superior Courts, it is impossible in the limits of one volume to supply all the various information the subject would admit of.

"The lists of appointments down to the accession of George the Third, have been selected from the repertory of Patentee Officers, collected and arranged by Mr. Lodge, and first printed in the *Liber Hibernicus*, but as no part of that work was ever published, they have remained almost unnoticed. The appointments from 1760 have been collected from the best and most authentic sources. These abstracts of patents contain the name of the individual appointed to the office; the succession, that is, in whose place or on what occasion the person was appointed; the date of the Sovereign's Letter or Privy Seal for the appointment; the date of the patent; the term for which the office was granted; the fee or salary annexed to the office, and some of the early patents contain entries of payments for offices previously filled by the individual; the year of the sovereign's reign, and the roll or authority quoted for the appointment. The term of office was sometimes during life, sometimes during good behaviour, but oftener during the sovereign's pleasure; in all cases the death of the sovereign determined the commission. In the year 1782 this was altered by an act of the Irish Parliament, which secured the independence of the Judges, and declared their commissions shall continue during good behaviour, and notwithstanding the demise of the crown. Mr. Lodge only notices those appointments of which some roll or record existed; hence it was impossible to form a perfect series, from the destruction of many records; for instance in the time of Cantoc, chancellor, all the records of Chancery down to the reign of Edward I., were destroyed by fire.

"Numerous chasms and omissions may be observed in the succession of appointments; as far as the twenty-sixth year of Henry the eighth the series is frequently interrupted and broken; from that date the lists are carried down with tolerable regularity to the year 1644. From that to 1655 there is a chasm very obviously to be accounted for. Cromwell's rolls commence in 1655, from which time or from the Restoration the lists will be found regular.

"Many of the patents are continuations, renewals or amendments of former grants. The

number of Judges in each court was very uncertain. Edward 2, being informed that there were more justices appointed than there ought to be in the King's Bench in Ireland, issued writs to discharge and remove all but three of the most efficient of them, yet untill the reign of Elizabeth two would appear to have been the usual number in the King's Bench and Exchequer.

"The separation of the Common Pleas and Exchequer would appear not to have taken place at so early a period in Ireland as in England. In Prynn's Collections writs are mentioned which were issued to the sheriffs of the different counties, concerning the jurisdiction and settling of the Court of Common Pleas in the sixth of Edward the third, according to the great charter and the Court of Common Pleas in England. In the reign of Queen Elizabeth a third Judge was added in each Court, and with very few exceptions was continued by her successors. A fourth was appointed in 1784.

"The chronological table gives the promotions, deaths and resignations, from the time of Queen Elizabeth, with the dates of those changes; (a similar table of the law officers of England was published some years since;) also lists of those in office on the accession of each sovereign; the dates of the promotions are those in the patents. In some few instances, where the patent was not finished, or where from some other cause the exact date of the patent could not be ascertained, that of the royal letter or privy seal is substituted.

"In the chronological table and index the computation has been adopted from the first year of the reigning king or queen, and not from the first of January in each year: thus the reign of Queen Elizabeth began November 17, 1558, consequently every promotion or death which might have taken place before November 17, 1559, will be found under the first year, 1558; the same rule has been observed throughout.

"A list of those who had patents of precedence together with tables of offices created at different periods, of the salaries in 1690 and at the present time are subjoined.

"In the Outline of the Legal History will be found a sketch of the state of the law and its administrators at different periods. The author, Mr. Duhigg, was for many years librarian to the King's Inns. It does not extend beyond the year 1806, and the correctness of the individual characters he has traced will be admitted by those really acquainted with the history of the country.

"As a work of this nature will be chiefly useful for reference, the Indexes have been formed to facilitate that object; and it is hoped that in general, and in the most important parts, the work will be found correct."

The historical sketch above extracted cannot fail to be read with interest.

## GRIEVANCES OF THE PROFESSION.

## NON-PAYMENT OF COUNSEL'S FEES.

Sir,

It was with no little pleasure on taking up the *Legal Observer* for Saturday, the 25th of May, I found that a system, which has now arrived at a most intolerable height, has been made the subject of a most severe, but at the same time a most just animadversion, by one of the legal profession, who, in the cause of justice does not spare his own unworthy brethren. The system to which I allude is the very commonly lamented one of defrauding the barrister or special pleader out of his just earnings, and is adopted by a set of beings, who, some how or other, have crept into the profession, and who, styling themselves solicitors and attorneys, enjoy for a time the appellation of "gentlemen." Under this disguise they are allowed to practise these frauds, and as they escape with impunity, they laugh at any attempt to prove the dishonesty of their practices, and to shew them that as a barrister is supposed to live by his labour as well as any other man, what a cruel robbery it is to deprive him of his fees—the only answer one can obtain is, "Oh, it is considered all fair game to make young barristers work for nothing."

But, Mr. Editor, can nothing be done to remedy this evil? Surely if one person more than another would feel annoyed at the practice, it must be the honourable, the upright solicitor. It must be the man who, zealous in every transaction of maintaining the respectability and moral purity of his profession, feels indignant when he contemplates the reproach which has been brought upon it by means of a class of practitioners, who, being void of the least particle of moral feeling and common honesty, are only deterred from committing the most disgraceful acts, by the hard letter of the law, and from a dread of its punishment.

When the Incorporated Law Society was first established, it was hailed as a most happy event, as being a means of keeping the profession select—operating like a winnowing fan, to blow at a distance the chaff of the profession. Sometime after its institution, the examination of articulated clerks, previous to their admission as attorneys, was adopted, which very judicious scheme may be called the sieve of the profession (*cribrum legale*) through which those only can pass who are qualified by a certain amount of legal knowledge; and then through the medium of the *Legal Observer* many a professional abuse has been brought to light and exposed to open day, which would otherwise have remained concealed. And, I cannot help thinking, that if the reputable part of the legal body, and more especially the members of the Law Society, would hestir themselves, and would be faithful to the trust reposed in them, a great deal might be done. A man who loses at cards, or at a horse-race, is, to use a familiar expression, "cut," if he will not pay his debt, simply because it is a debt of honour, and there is no law but the law of honour to

compel him. Well then, how much rather ought those attorneys to be held up to scorn, who refuse to pay that which is not only a debt of honour, but of honesty, and which has been earned with many a weary attendance at Court, or the drudgery at chambers.

A BARRISTER.

## SHARP PRACTICE.

Mr. Editor,

The frequency of speculative summonses to set aside proceedings upon mere technical grounds, requires some check, either by imposition of costs, or the direct discountenance of the judges.

One of the inventions resorted to at the close of the last term for endeavouring to throw a cause over the long vacation, was in the shape of a summons to set aside the issue and notice of trial, on the ground that the cause of action was not mentioned therein.

It seems that by an old rule of Easter, 18 C. 2, in making up the issue, the declaration was copied entire. Subsequently came the warrants of attorney, with their ancient subsidiaries "John Doe and Richard Roe;" but whose services, like those of the venerable guardians of the night, are now dispensed with whenever practicable.

The last rule, Hilary Term, 4 W. 4, Form, No. 1, seemed to have set the whole question at rest, by directing that the declaration should be copied from the words, "*For that whereas;*" and so thought the Court of Exchequer in the case of *Ball v. Hamlet*, 1 Crompt. Mee. & Ros. in which it was held by Mr. Baron Parke, that "the manner by which issues are now directed to be framed, does not require that the form of action should be stated."

In opposition to this, however, Mr. Justice Littledale has held at chambers, that the form of action should be specially stated in the issue; but allowed a party to amend *on payment of costs*. So that the objecting party did not gain an entire overthrow of the proceedings, although he was something in pocket by the operation.

In a case of my own the other day, one of the judges, on my citing the case of *Ball v. Hamlet*, at once refused the application of my opponent to set aside my issue; by which, had it been granted, the action would have been suspended till Michaelmas Term.

Is it not degrading to the profession, as a "noble science," that such contemptible shifts to avoid or postpone a fair trial of a question, should be permitted? Every issue by a "copy of a declaration," must sufficiently disclose the cause of action, or rather repeat that which a defendant has already *had* in his *particulars of declaration*, and render any further tautology quite unnecessary.

I do not wish to see records disgraced by bad spelling, bad grammar, or omissions; and perhaps a small fine might be necessary to preserve a proper accuracy in this respect: but

none of this should go to the "informer." No encouragement of this sort should be held out for this amiable interchange of civilities. And on no account should a plaintiff or defendant be prejudiced by these paltry efforts of their legal antagonists, either by setting aside or delaying proceedings on simple technical grounds. The fines should go to cheer and comfort the latter days of decayed professional men, having become too aged and too poor to make any more blunders; but the Law Society would set a noble example, by blackballing any candidate for membership, who had been guilty of extremes of sharp practice of this description.

One word on the subject of *attornies wearing gowns* in courts of justice. If it would elicit a little more respect and kindness towards them, either from the bar or the bench, it would be highly desirable. Something is necessary to put them in somewhat of a different position to that in which they stand at present in relation to both these branches of the court. Heavily taxed by the government,—having paid large premiums to be articulated in the profession,—a larger sum still (towards another severe tax, the Law Book monopoly) for their library; having undergone a rigorous examination with the chance of (to use a phrase of one of the judges) "being plucked," they enter the courts of justice, and sit in a hole or trench with some of the lowest members of the profession. And then at chambers, before encountering the person of the judge (who arrives at a late hour, jaded with the fatigues of the day,) the waiting room of the attornies is *paved with stones*, and in damp weather their situation is not preferable to the station of the waterman of a Hackney Coach stand. In Lord Mansfield's time, attornies were better treated; they now look for better days; and to the vigour of their own exertions and to the aid of your excellent journal (which has always shewn the most friendly feeling to our branch of the profession), I hope they will be indebted for being some day or other placed in the position they desire to occupy, as important officers of the superior courts of justice.

CIVIS.

## INCONVENIENCES AT THE ASSIZE COURTS.

*To the Editor of the Legal Observer.*

IN connection with the observations which have recently appeared in your pages on the subject of "Attornies wearing Gowns in Court," should it not be borne in mind that a room for attornies would be required? Certainly they, as much as barristers, would need such an apartment. But I would take the liberty of remarking that, whether the practice of attornies appearing in gowns be revived or not, it may reasonably be required, for the convenience of attornies, that a room should be provided for them, in which they could with safety leave their law-bags, &c. during

their attendance in Court. Every attorney having had business in Court must have experienced the necessity for such an accommodation. An extra room would supply all the wanted accommodation, and a room-keeper might be appointed to take especial care of the things left therein; which individual, if needed, might be remunerated by a small fee, *per diem*, paid to him by each attorney availing himself of the convenience.

It is rather surprising that so little care has been taken to provide for the convenience of attornies whilst attending the Courts. They are the only "officers of the Court" whose claims in that respect are overlooked. As such officers (presumed always to be present in Court), it is surely reasonable that they should have the accommodation suggested.

These observations originated from the experience of the writer as an attorney attending the Liverpool Assizes. In that capacity an attorney arrives at the assize town, having in his charge the papers and important documents connected, it may be, with two or three causes which he is about to try—which papers and documents he is obliged to carry about with him, from day to day, until his business has been concluded; and so (besides his personal trouble) incurs a risk of losing them in his peregrinations between his inn and the Court.

It is not a mere fiction that attornies are supposed always to be present in Court. Only let an attorney be absent when his cause is called on! How does he fare in such a case? He is sued for negligence. As an admitted officer of the Court then, and as an attorney of the Court, I say that he has equal right, in justice to himself and his client, to have as much freedom of access to all the offices of the Court, and to every part of the Court, as have the barristers, or any of those official personages who are actually in attendance on the Judge, or otherwise engaged in the business of the Court, *not* on behalf of clients.

It may be asked, "who doubts it?" I reply (alluding, as before observed, to my experience at the Liverpool Assizes) that, although such right is theoretically admitted, *practically* attornies meet with obstructions, particularly from the door-keepers of the Court, who (being police-men) not having had much experience as door-keepers, frequently overstretch their authority by refusing admission to attornies who actually have business in Court. Are there not many attornies who have been obstructed in attempting to enter the Courts in Liverpool? Who has not witnessed unseemly altercations commenced by the policeman stationed at the door refusing admission to an attorney, notwithstanding the latter condescended to urge that he *momentarily* expected his cause to be called on, or that he had a particular enquiry to make from some "officer of the Court?" "The Court is crowded," says door-keeper, "and you can't go in. There is that *crim. con.* case on; there is no room; and *orders* have been given that no more persons be admitted." In vain

does the attorney urge that he has occasion "to go in;" and, independently, that he is an attorney of the Court,—“I don't care what you are” may be the answer, accompanied probably with a by-no-means-agreeable thrust from the fist or staff of the jack in office. When the assizes were first held in Liverpool, an absurd rule was promulgated, rendering it necessary for an attorney to produce a sort of admission ticket to the door-keeper, and I know several attorneys were denied admission because they could not produce a *ticket*!

Contrast such a state of things with the respect shown to barristers, by virtue of the wig and gown! The inflexible door-keeper, or other official, who thought nothing of opposing an attorney's entrance, or refusing his request, at the approach of a wig and gown (silk or stuff) all at once becomes the paragon of official courtesy, with all his might and zealous voice calling out “make way, make way” for the barrister, albeit he appears with “briefless bag collapsed,” the peregrinators out of one Court into the other, being generally those of the long robe who have few or no retainers in either.

To procure similar respect for attorneys, I would be decidedly favourable to their wearing gowns in Court, *unless some less cumbersome distinction would suffice.*

It has often been complained that the Courts at Liverpool are inconveniently small. There may be some foundation for the complaint; but, on the part of those who actually have business in Court, I question whether the space appropriated for mere spectators be not amply sufficient. At all events, unless (in analogy to the constitution of the Lower House of Parliament) all the Commons in England are supposed to be present, any increased accommodation for mere auditors would only have a tendency to create more noise, to the annoyance of the Court, the obstruction of business, and occasioning a state of things described by Paddy when he said of an uproarious meeting he had attended, “I never *heard* so much ‘silence’ in my life.” A Court which will comfortably admit three hundred spectators is surely, to all intents and purposes, as much an “*open Court*” as the public can expect.

I have, however, one suggestion to make, which, if adopted, would do away with the bustle, talking, and walking in and out of Court, for the mere purpose of ascertaining how the cause list stands, to enable the inquirer to judge how soon he may be wanted. All this would be prevented by the Judge directing an officer to exhibit, at the Court entrance, a cause list, with such of the causes as had been disposed of struck out, and shewing which cause at the moment was under consideration. The same suggestion would be equally useful if adopted in the Crown Court. The utility of the information which would be so afforded would be very great to attorneys, witnesses, &c. and also to counsel, but which cannot at present be obtained without considerable difficulty and much inquiry, unless you are actually present from the opening to the closing of the Court.

I trust these “*notices*” may, through your pages, be published in time to afford them “a trial at the ensuing assizes to be holden at Liverpool.” T. P. M.

## IMPROVEMENT OF THE CITY COURTS.

THE following reference is now before the Secondaries Committee of the Corporation of London, and it is to be hoped the result of their labours may be an efficient and useful Court.

To consider whether it is expedient to consolidate the Court of Hustings, the Court of Mayor and Aldermen in the outer chamber, and the two Sheriff's Courts, into one Court, of which the Recorder and one or more deputies or assistants to him should be the Judges, and all barristers and *attorneys practising in the superior courts*<sup>a</sup> should be permitted to practise in such newly constituted court; and, if so, to devise a plan, and suggest such other regulations as they may deem best for carrying the same into effect. Also,

To consider the propriety of continuing the law of attachment, which is exercised by the local law courts of this city, and if it should be deemed desirable, to retain such process for the purpose of compelling the appearance of an absent debtor; whether its practical operation should be so changed with regard to the taking of bail and the payment of costs, as to increase its efficiency, and remove some of the hardships which now attend its operation: and further, as the property and moneys within the city are subjected to the operations of such a law, whether the property and moneys in other parts of the country belonging to the debtors of citizens should be subjected to a similar process: and to report their opinion thereon.

## SELECTIONS FROM CORRESPONDENCE.

### PROTECTION OF PURCHASERS.

Sir,

I have read the 2 Vict. c. 11, and it certainly has introduced a very great improvement into the law as regards the operation of judgments &c. upon land.

But a few observations suggest themselves upon the 12th and 13th sections.

By the 12th, it is, I presume, intended to be enacted, that a purchaser for valuable consideration, having no notice of an act of bankruptcy, will be protected, no matter how soon a fiat may follow.

<sup>a</sup> Attorneys of the Superior Courts, *frecmen of London*, are now admitted by the Court of Mayor and Aldermen, to practice in the Sheriff's Court;—they have occasionally claimed the right of pleading therein, but it has not been encouraged by either the judge or counsel.

But it is probable a question may arise upon the use of the words *bond fide* in that section. It says, "all conveyances by any bankrupt, *bond fide* made &c., shall be valid." Now a purchaser may be innocent of all fraud; he may have bought for full value without notice, and still the transaction may not be a *bond fide* one, so far as the bankrupt is concerned. His conduct may be fraudulent, and the sale may be effected to defeat his creditors and to pocket the money. In such a case it would not be *bond fide* made by the bankrupt.

Another doubt may arise, whether mortgages are within the protection of this section—whether they will or will not be considered purchasers *pro tanto*. As regards sec. 13, why was it inserted in this act? It is a *verbatim* copy from the Bankrupt Act, 6 Geo. 4, c. 16, s. 86. And the drawer of the bill must have forgotten that *flats* have been substituted, since the 6 Geo. 4, for *commissions*.<sup>a</sup> SPES.

#### HOLIDAYS AT THE CHANCERY OFFICES.

Sir,

The old grievance of the uncertainty of holidays seems to be as great as ever in the Chancery offices. The Queen's birthday was kept as a holiday, (on the 23rd instead of the 24th of May) notwithstanding its being in term time, in the Accountant General's office. The 29th of May was also kept as a holiday in that office.

The greatest hardship on parties is certainly with regard to the Accountant General's office. It so happened that both for the 23rd and 29th of May, I made appointments for parties to attend there from the country to receive money, and in both cases they were disappointed, without any means of preventing it.

It seems to me that the offices should be compelled to attend to the orders of the Court as to holidays, by being subjected to considerable fines for non-attendance, for at present it is too evident that the official persons consider those orders mere waste paper, and unworthy of attention.

I would also suggest, that to all parties attending at the Accountant General's office to receive money, an authorised list of holidays should be given on the party receiving the first payment. This would in my opinion work a great practical and useful reform. A. Z.

[With regard to a remark made by our correspondent on the *Legal Almanac*, we beg to say that the best information that could be obtained at the time is there stated on the subject of holidays. ED.]

#### ATTORNEY'S GOWNS.

Sir,

I believe that I may claim credit (if credit be due to any one) for having been the first to direct the attention of the profession to "the resumption of professional costume." In the *Legal Observer* of the 29th Dec. 1832, vol. 5, p. 154, you will find a letter bearing my signature, and founded upon a communication I

had made to you some months before. I say founded, because some part of my letter was omitted. I had provided for the distinction between the Courts of Equity and Common Law by adding a scarf lined with white (as worn by the proctors in the Arches Court), or crimson when attending in the Court of Chancery. I also urged the necessity of wearing bands, as essential to distinguish the practitioner from the Court Keeper and Usher—(indeed the latter might wear blue gowns). The wig I discarded as inconvenient, for more reasons than one. I am glad to find the question has been revived, and shall be happy to assist in bringing it before the heads of the profession. We are now an incorporated body, and ought to assume the distinction not only as belonging, it may be said, to a college, but as it will tend to increase the respectability of the profession. WILHELM.

Sir,

I have been much amused with the proposal of your correspondents, that attorneys should wear gowns whilst attending the courts of justice. I have no objection to any attorney doing so who may like it, but I must protest against the Judges being applied to by the profession, to make an order for every attorney to wear the livery of the ushers and criers of the court, independent of the great inconvenience of such an appendage. For my own part, I will wear no man's livery.

A LONDON ATTORNEY.

[We have received several other letters on this subject, which now appears sufficiently brought to notice. The evil of not having proper seats in court might be remedied without wearing a gown. ED.]

## SUPERIOR COURTS.

### Lord Chancellor's Court.

#### LUNACY.—REAL AND PERSONAL ESTATE.

*The real estate of a lunatic being in want of repairs, the expense of the repairs was ordered to be paid out of the personal estate, consisting of money in Court arising from the rents of another estate, the next of kin of the lunatic objecting.*

Mr. Cole, in support of a petition presented by the heir-at-law of a lunatic to confirm the Master's report, said, there was one point on which it was desired to have the opinion of the Court. The lunatic had real estate at Leatherhead, which required repairs. He had also leasehold estate at Mile-end, the rents of which were paid into Court by the committee, and amounted to a certain sum more than sufficient to defray the expenses of the repairs on the estate at Leatherhead. The question was, whether the money in Court should be applied to the repairs, or a sum should be raised for that purpose out of the estate requiring the repairs. The latter course would be urged for the next of kin of the lunatic; but the proper view of this question was, what would the lu-

<sup>a</sup> See the bill on this subject, p. 146, *ante*.



natic himself do if he were of sound mind? Would not he apply the money in hand to the purpose of the repairs?

Mr. Young, for one of the next of kin, said that the estate of the heir-at-law, who was the committee and petitioner in this case, ought not to be repaired at the expense of the next of kin. The statute 11 G. 4, and 1 W. 4, c. 65, did not make any provision for this exigency; but there were two cases which bore on it: one of them was *ex parte Ludlow*,<sup>a</sup> in which the committee of the lunatic's estate, being themselves entitled to the estate after the lunatic's death, laid out part of the personal estate in the purchase of timber for repairs, instead of cutting timber which was on the estate. Lord Hardwicke said, they should have cut down timber for the repairs, and he compelled them to make good to the personal estate the sum so laid out. The other case was *ex parte Harris*, mentioned in Mr. Shelford's Treatise on Lunatics, and found, on examining the registrar's book to be quite correct. In that case, as in this, it appeared to be absolutely necessary, and for the benefit of the lunatic's estate, to repair a farm-house. The sum required for the purpose was ordered to be made a charge on the real estate, for the improvement of which the money was to be expended.

Mr. Lowndes for another of the next of kin of the lunatic.

The Lord Chancellor.—The statute did not give power to sell any part of the estate for the purpose of repairs or improvement. It appeared to him to be in the ordinary course of management of the property to lay out the money in hand in the repairs of the freehold property which is out of repair. No person having money in hand would go to the trouble of raising money for improving his estate.

In the matter of *Badcock*, at Westminster, May 25th, 1839.

#### Queen's Bench.

[Before the Four Judges.]

##### NUISANCE.

*Where a party defends himself against an action for a nuisance by a claim which in substance amounts to a prescription for an easement, his plea must distinctly shew that the thing claimed is an easement, that is, a right of accommodation over another man's land.*

*2nd, Whether the claim of having a mixen or dung heap on the defendant's own ground, the offensive smell passing over the plaintiff's land, can be supported as a claim of an easement?*

This was an action for a nuisance for keeping a mixen (that is a dung-heap, where all kinds of offensive matter were deposited) on the defendant's own ground, the plaintiff complaining of the smell that was thereby en-

gendered. The defendant pleaded that he had been used and accustomed to keep his mixen on his ground for above 20 years. At the trial of the cause before Lord Denman in Dorsetshire, the jury found the following verdict: "We consider it to be a nuisance, but we think the plaintiff came to it, and that it has been continued for above 20 years." This was entered as a verdict for the defendant; a rule had since been obtained to enter judgment for the plaintiff *non obstante veredicto*, on the ground that the defendant's plea was a plea of prescription for an easement, which had not been supported by proof at the trial.

Mr. Barstow shewed cause against the rule. The plea here is a good answer to the action. It is a claim made under the second section of the 2 & 3 W. 4, c. 71. The question is whether this is not properly described as an easement, which has been used for more than 20 years. It is said not to be an easement, because an easement must be enjoyed over the land of another person; whereas this is something claimed to be lawful in a man's own land. [Mr. Justice Coleridge.—The smell itself is *in alieno solo*.] The plea is good within the second section of the statute. [Mr. Justice Patteson. No, for you must plead a grant of the easement, which you have not done.] But that section applies to cases where the grant is assumed. It would have been a good plea to plead as at common law that the defendant had a right to have these smells over his ground. This is not the less an easement because a smell is not the subject of sight or touch. The definition of an easement in Burton's Real property<sup>a</sup> is that it is "a right of accommodation in another's land." [Mr. Justice Coleridge.—But your plea does not disclose that this accommodation which you claim to have had for 20 years is an accommodation extending over the plaintiff's ground; even assuming that such an accommodation may be an easement, you have not claimed it as such.] The defendant claims to have had that mixen on his land for above 20 years. [Lord Denman C. J.—Still that does not shew it to be an easement, nor can it be one without it is shewn to be an accommodation over another man's land.] It may be an easement if on any occasion of necessity it may be used over another man's land.

Mr. Manning, *contra*, was stopped.

Lord Denman.—In order to support this plea the claim must be proved to be that of an easement. No such claim is shewn on the face of the pleadings. The proof shewed the matter complained of to be a claim to do that which the jury found to be a nuisance, and the plea did not justify it as an easement to which the defendant was entitled by prescription.

*Per Cur.*—Rule absolute. *Flight v. Thomas*, T. T. 1839.

<sup>a</sup> p. 386.

## INTERPLEADER ACT.—PRACTICE.

*Where a party has obtained a verdict in a proceeding under the Interpleader Act, (1 & 2 W. 4, c. 58,) he must enter up judgment on an order of the Court according to the provisions of the 7th section of that statute. He must not sign judgment in the ordinary manner.*

Mr. Biggs Andrews shewed cause against a rule for setting aside a judgment signed by the plaintiff, on the ground of irregularity. The ground of this motion was, that this was a feigned issue, directed by the Court under the Interpleader Act (1 & 2 W. 4, c. 58), and that the judgment had been signed upon the verdict given at the trial, instead of being entered up on a rule of court, under the provisions of the 7th section of the statute.<sup>a</sup> The objection made to the signing of the judgment in this case cannot be supported on the words of that section. No power is there given to take further proceedings. The chief object of the section seems to be, to secure a regular entry of the proceedings; and then it is said, that rules and orders entered are to have the force of judgments. But there was no order made on the verdict, and that section does not seem to contemplate a case of this sort. At all events the party is not bound to enter more than is stated in that section, namely, rules, orders, matters, and decisions, but nothing is said of verdicts. The Master directed that the judgment should be entered up on the *postea*, and it was so done under his direction. There is nothing in the statute which prevents the plaintiff from adopting that proceeding. The jury gave a verdict for the plaintiff, damages one shilling. There was, therefore, a foundation for the judgment and for the taxation of costs; and it was quite regular to pursue the ordinary course of proceeding on this occasion. It is clear that the legislature did not bind the party to do no more than enter up the rules and

orders: it did not intend to preclude him from entering up judgment in the ordinary way, for his object might be to bind the lands of the other party, which an order entered up under the statute would not do.

*Per Cur.*—The section clearly indicates that all the proceedings under this act are to be entered of record in the manner there stated. When so entered they are like the proceedings in an ordinary action. When the proceedings are of record, they are assimilated in every way to other proceedings, have the force of judgments, and writs of execution may issue on them. They ought to have been so entered here.

Rule absolute.—*Dickinson v. Eyre*, T. T 1839. Q. B. F. J.

## BOND.—PLEADING.—RESTRAINT OF TRADE.

*In an action on a bond not to enter into the service of another for two years after quitting the service of the plaintiff, the declaration must shew some consideration for such an obligation. A consideration for it cannot be presumed.*

Debt on bond. The declaration stated that the defendant had entered into a bond, conditioned that he would not enter into the service of any other person in Sheffield, or within ten miles thereof, for the space of two years after quitting the service of the plaintiff. Demurrer to the declaration. The points raised were, first, that there was no sufficient consideration set forth for the bond, which was a bond in restraint of trade. Secondly, that the bond was a restraint within the limits mentioned therein from working at all.

Mr. Butt in support of the demurrer.—The authorities from *Mitchell v. Reynolds*<sup>a</sup> to *Hitchcock v. Cotter*,<sup>b</sup> all lay down the rule that when a contract is in restraint of trade it is bad, and that a sufficient consideration for it must be stated and proved. He was stopped.

Mr. Whitehurst, *contrb.*—It is not necessary to state the consideration in an action of this sort; but, if it should be decided otherwise, then it is submitted that a sufficient consideration has been stated. It is a mistake to call this a bond respecting trade. There is no allusion to trade in it. The objection to a contract of this sort has been that it restrains the party entering into the obligation from the practice of his trade, but that is not done here. For aught that appears to the contrary, the defendant may have been a menial servant. To restrain a menial servant from entering the service of another party has never yet been decided to be illegal. If this bond is void, it would have been void at common law. Is it so? Certainly not, for nothing appears to shew that it goes to impose a restraint which the law will not permit. Then as to the second objection; this being a bond, it is not necessary that the consideration for it should appear on the face of the instrument.

<sup>a</sup> By which it is enacted, "That all rules, orders and decisions to be made and done in pursuance of this act, except only the affidavits to be filed, may, together with the declaration in the cause (if any) be entered of record, with a note in the margin expressing the true date of such entry, to the end that the same may be evidence in future times if required, and to secure and enforce the payment of costs directed by any such rule or order. And every such rule or order so entered shall have the force and effect of a judgment, except only as to becoming a charge on any lands, tenements, or hereditaments. And in case any costs shall not be paid within fifteen days after notice &c., execution may issue for the same sum by *fi. fa.* or *ca. sa.* adapted to the case, together with the costs of such entry, and of the execution if by *fi. fa.* And such writ and writs may bear teste on the day of issuing the same, whether in term or vacation. And the sheriff or other officer executing such writ, shall be entitled to the same fees and no more, as upon any similar writ grounded upon the judgment of the court."

<sup>a</sup> 1 P. Wms. 181; 10 Mod. 27, 85, 130; Fort 296.

<sup>b</sup> 2 Harr. & Woll. 464; 6 Adol. & Ell. 438.

[Lord Denman.—But taking what is alleged to be the condition, can a bond with such a condition be maintained without a consideration for it being shewn?] It may, for it may be presumed that the obligor was at the time of making the bond in the service of the obligee. The obligation is that the obligor shall not go into the service of any other person for the space of two years after quitting that of the plaintiff. That condition itself shews that at the time of entering into the obligation he was in the service of the plaintiff. His being so was a sufficient consideration for the bond.

Lord Denman, C. J.—We cannot leave that to matter of conjecture. But even that conjecture may or may not be true in fact. If an obligation of this sort is sought to be enforced, some consideration for it must be shewn. None is shewn here.

Judgment for the defendant.—*Hatton v. Parker*, T. T. 1839. Q. B. F. J.

### Exchequer of Pleas

#### APPLICATION TO SET ASIDE PROCEEDINGS FOR IRREGULARITY.—TIME OF APPLYING.

*Where upon an application to set aside proceedings for irregularity, it is alleged in answer that it comes too late, in order that the fact of a previous application at chambers may be relied on, it must appear on affidavit, or the rule should be drawn up on reading the order made by the learned Judge.*

This was a rule calling upon the plaintiff to shew cause why the bail-bond should not be given up to be cancelled. The defendant was arrested on the 28th March under an order of Mr. Justice Coltman, made in pursuance of 1 & 2 Vic. c. 110, s. 3, and the present application was made on the 17th April. The ground of application was, that in the copy of the writ served upon the defendant it was stated in the memorandum that the writ was to be executed within four calendar months, instead of one calendar month, as required by the statute. The writ itself, it appeared, was regular.

*W. H. Watson* shewed cause, and submitted that the application came too late, and that it should have been made within the time limited for putting in bail. *Brashour v. Rupell*, 5 Scott, 268.

*J. W. Smith* in supporting the rule, said, that a similar application had been made at Chambers, but the parties were directed to come to the Court within the first four days of term.

Lord Abinger, C.B.—That is not sworn, nor does it appear that the rule is drawn up on reading the order of the learned Judge.

*J. W. Smith* urged that the Court would take notice of the summons and order, as the judge at Chambers had concurrent jurisdiction. The plaintiff's attorney must be aware of what had taken place, for the order was drawn up on hearing the attorneys on both sides.

The Court decided that they could not take notice of what took place at chambers, as there was no affidavit as to what passed; and the rule

was not drawn up on reading the order of the learned judge. There was no notice either given to the plaintiff, from which he might infer that the previous application would be relied upon. The present application was therefore *prima facie* too late, and the rule must be discharged with costs.

Rule discharged with costs. *Shugars v. Concannon*. E. T. 1839. Excheq.

#### SETTING ASIDE DISTINGAS.—ENTITLING AFFIDAVITS.

*When a motion is made to set aside a distingas, the affidavits must be entitled in the same manner as the names of the parties are stated in that writ, although they are there incorrectly given.*

*Humphrey* shewed cause against a rule obtained by *Gray* for setting aside a *distingas* and all subsequent proceedings, for irregularity. He took an objection to the manner in which the affidavit was entitled. The notice subscribed to the writ of *distingas* was headed "In the Exchequer of Pleas, between John Borthwick, plaintiff, and Henry Ravenscroft, defendant;" but the affidavit was entitled "*Borthwick v. Humphrey*, William Ravenscroft, sued as Henry Ravenscroft." As there was no cause in court, the affidavit should have been entitled in the same manner as the notice subscribed to the *distingas*. No writ had issued against the persons mentioned in the affidavit, and even admitting the name used to be incorrect, the same should be used until after appearance.

*Gray* in support of the rule.—The omission of the plaintiff's christian name was immaterial. With regard to the defendant's name, it was for the advantage of the plaintiff that it should be properly stated, as it would save him the costs of an amendment hereafter.

The Court said that it was clear that there was no such cause as that mentioned in the affidavit: that might have been the proper mode of entering an appearance, but until that step was taken, the title of the cause was the same which was stated in the writ of summons.

Rule discharged.—*Borthwick v. Ravenscroft*, E. T. 1839. Excheq.

#### CHARGING DEFENDANT IN EXECUTION.—FOREIGN CUSTODY.

*The defendant being in custody under an order of the Lords of the Admiralty, the Court refused to grant a writ of habeas corpus to bring him up, to charge him in execution.*

*John Bayley* moved for a writ of *habeas corpus* to bring up the defendant that he might be charged in execution. He was in custody under an order of the Lords of the Admiralty, but it did not appear whether or not he was about to be tried by a court martial.

The Court said that they could not change

the custody, and if they allowed the defendant to be charged in execution, they would make the naval gaoler liable in the event of his escape.

Rule refused.—*Jones v. Danvers*, E. T. 1339. Excheq.

## LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

### House of Lords.

To amend the Law touching Letters Patent for Inventions.

[For second reading.]

Belper,—Hatfield,—Halifax,—Huddersfield, and Bradford Small Debts Court Bills.

To prevent persons from losing their votes at an election by removal after the preceding Registration. [For 2d reading.]

To amend the Law relating to the Custody of Infants. [For 2d reading.]

### *Bills passed the House of Lords.*

Protection against Bankruptcy.

Common Pleas Regulation.

Usury on Bills of Exchange.

### House of Commons.

#### ADMINISTRATION OF JUSTICE.

For the Protection of Purchasers against Bankruptcy. See p. 146, *ante*.

To amend the 1 Vic. c. 80, for exempting certain Bills and Notes from the Usury Laws. No. II.

To improve County Courts. [In Select Committee.] Lord John Russell.

For keeping and authenticating non-parochial Registers of Births, Deaths, and Marriages. [For 3d reading.] Lord John Russell.

For regulating the Police Courts in the Metropolis. [In Committee.]

To regulate and enlarge the Summary Jurisdiction of Justices. Lord John Russell. [In Committee.]

For further improving the Police in and near the Metropolis. Mr. F. Maule. [For 2d reading.]

Small Debts Court Bills for the following places:—

Aberford,	Nottingham,
Bury, (Lancashire)	and
Chesterfield,	Mansfield,
Eckington,	Oldham,
Glossop,	Pontefract,
Grantham,	Rochdale,
Kingsbridge and	Rotherham,
Doddbrooke,	Tavistock,
Leeds,	Warrington,
Liskeard,	West Ham,
Liverpool,	Worksworth,
Newark.	Yorkshire.
Newton Abbot,	

To abolish Grand Juries. Mr. Pryme.  
For regulating the High Court of Admiralty. [In Committee.]

To regulate the Proceedings of Borough Courts. No. II. [For 3d reading.]

To regulate the Proceedings in the Stannary Courts. [In Committee]

To indemnify Persons omitting to qualify and to relieve Clerks to Attorneys. [For second reading.]

#### LAWS OF PROPERTY.

To amend the Law of Copyright. [In Committee.] Mr. Serjt. Talfourd.

For securing the Benefit of Inventions in Arts and Manufactures. Mr. Mackinnon.

#### LAW OF ELECTIONS.

For the registration of Parliamentary Electors. [In Committee.] Mr. Attorney General.

Controverted Elections. Lord Mahon. [For 2d reading.]

To amend the jurisdiction for the Trial of Election Petitions. Sir R. Peel. [For 2d reading.]

For establishing a Court of Appeal from the Revising Barristers. [Mr. C. Buller.] [In Committee.]

#### HIGHWAYS.—SEWERS.—RATES.—TURNPIKES.

To amend the Laws relating to Highways. [In Committee.] Mr. Barneby.

To alter and amend the Laws relating to Sewers. In Committee.] Mr. Christopher.

To provide for making Unions of Turnpike Trusts. [Mr. Mackinnon.] [In Committee]

For relieving Poor Persons from Rates. [For 2d. reading.]

To continue Turnpike Acts. [For 2d reading.]

### *Bills passed the House of Commons.*

Enfranchisement of Copyholds.

Custody of Infants.

Exchequer of Pleas Inquisitions.

Removal of Electors.

#### USURY ON BILLS OF EXCHANGE.

This bill which passed the Commons, making perpetual the exemption from the usury laws, of bills payable within twelve months, was amended by the Lords, who substituted for

a perpetuity the year 1842, and a proviso was added to the effect that, the act should not extend to loans on security of lands, tenements, or hereditaments, or any estate or interest therein. The bill, so amended, was sent down to the Commons, and a new bill described as "Bills of Exchange, No. 2," has been brought in to the same effect, with the addition of a clause which provides that the act shall not affect the law as to pawnbrokers. Its continuance is limited to 1st January 1842.

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**OBJECTIONS  
TO THE  
BILL FOR PARTIALLY CLOSING THE  
COMMON PLEAS.**

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It will be observed by this Bill, which we printed p. 147, *ante*, that it is intended to give exclusive audience to the Serjeants in Term time, except on motions for new trials which have taken place at the *Assizes*. We do not understand what good reason there can be for excepting motions on trials in *London* and *Middlesex*. The trials there are more important than in the country. What boots it, that Queen's Counsel maybe admitted at *nisi prius* in the Common Pleas, if they are not permitted to support the verdict in banc, or apply to set it aside if against them? Suppose that amongst the twelve or fifteen serjeants there should be one or two, who in the opinion of their clients (whether right or wrong) far transcend the rest,—can justice be *satisfactorily* done, if all other advocates are excluded? We think not.

There is an obvious advantage in securing a Bar in constant attendance on each Court; and the provisions of the bill which are calculated to effect this object in term time, deserve support, but the principle should not be carried too far. In trials involving large interests of property and character, there should be the amplest provision to satisfy the suitor; and where the best Counsel have been engaged in one Court, there should be an opportunity

of an occasional selection from another. Justice must be impartial and even-handed.

The Bill, as our lists shew, has rapidly passed the House of Lords, without opposition or discussion, and almost unnoticed. It is now about to be printed for the House of Commons. What the eminent common law leaders will say to it, we know not. Perhaps they may have some scruples of delicacy in opposing it, as their interests will be materially affected. We recommend therefore that the attorneys in behalf of their clients, the suitors, should bring the subject to the notice of the House, either by petition to amend the bill, by striking out the exception of the London and Middlesex trials, or by applications to members of parliament individually. It is impossible that the clause can pass as it stands, if the interests of the public are brought into sufficient notice. The only words required to be expunged are, "*other than London or Middlesex.*"

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**THE EDITOR'S LETTER BOX.**

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We are willing to record, according to the suggestion of a Correspondent, the names of the Noble Descendants of Judges and retired Judges who were present at the Banquet in Serjeant's Inn Hall last Term, but are not in possession of a complete list of their names.

The letters of J. G.; "*Civis*;" and, "*a Professor of Constitutional Law*," are under consideration.

"A Constant Reader" whose articles will expire between Hilary and Easter Terms next, is informed that he cannot be examined *de bene esse* in the former Term, so as to enter in the subsequent one on the production of his testimonials and certificate of examination (if granted).

We have frequently noticed the complaints of solicitors who have been refused admission to the Central Criminal Court, and recommend our correspondents to bring the subject to the notice of the Court.

The communications of C. T. S., and "*An Attorney in the City*" shall appear next week.

The form we inserted of an affidavit to hold a person to bail who was going abroad, was taken from an original affidavit on which an order had been made.

# The Legal Observer.

SATURDAY, JULY 13, 1839.

— " Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## THE COPYHOLD ENFRANCHISE- MENT BILL.

HAVING felt considerable interest in the Bill for the Enfranchisement of Copyholds, which has now passed the House of Commons, and believing that this interest it shared very generally by the profession, we shall shortly state its object and effect, as it now stands. Our readers are aware that the more stringent clauses were withdrawn in Committee in the House of Commons, and we are inclined to think that this was the safer and better course. It may now be fairly tried how much can be done towards enfranchisement by removing difficulties, lessening expense, and calling general attention to the subject. If it shall be found that these means are insufficient, the public voice will probably call more loudly than it has hitherto done for a stronger measure, and rules may be laid down with greater confidence for carrying it into operation. No doubt many manors will enfranchise under the provisions of the present Bill, should it pass into a law; and the superior advantages of the freehold tenure, as compared with the copyhold, will be brought before the public, and thus all the desired objects may be safely and gradually obtained. With these general remarks, we may proceed to inquire as to the effect of the Bill now before the House of Lords as it regards the lord of the manor and the tenants.

And first, as to the lord. The present Bill cannot wisely be objected to by the lord. No step towards enfranchisement can be taken without his consent; and supposing him to desire to enfranchise, he may do so under the Bill with great advantage. He may, of course, prescribe his

own terms, and if they are not acceded to he may withdraw; he has a machinery qualified to dispose of questions both of law and of value, paid by the public, and ready to render him any assistance he may wish. He will be enabled to enfranchise though he may labour under disabilities in having only a particular interest in the manor. If he does not like the Act, he may have nothing to say to it; if he does, he may probably obtain more advantageous terms under it than he otherwise could hope to get. The fault of the measure we have always thought, and still think, is, that, as it now stands, it gives the lord too much power. Still, as it unquestionably facilitates enfranchisement, we are willing to take it as the best that can be had.

Next, as to the tenant. We certainly would willingly have given him something more: we would have given him more power. But he will be much benefited even by the present Bill. He will be saved the stamp duty on the proceedings, and the expense and trouble of a deed of enfranchisement. The land, when enfranchised, will be free from the incumbrances of the lord, and he will enjoy with the lord the benefits of the new tribunal for adjudicating on his rights. The interest of the poorer tenants is effectually protected by the clause (s. 53) which provides that the enfranchisement consideration shall not be payable by them until the event happens when a fine would be payable; and all the tenants will enjoy the advantage of the schedule of apportionment, which, when confirmed by the Commissioners, will be the simple evidence of what each has to pay, and when it has been paid.

But has the public no interest in this measure, independent of the persons par-

ticularly concerned in copyhold property? As it appears to us it has a very great interest,—the law will be simplified and rendered more uniform; the beneficial enjoyment of land will be increased, much property will be put in circulation, and many improvements, both in agriculture and in building, will be made. We sincerely trust, therefore, that this Bill may pass into a law in the present Session, and that the cause of rational and moderate law reform may thus be furthered. As far as we can learn, it is likely to meet with but little opposition, at which we are certainly not surprised, on the part of lords of manors, as they can hardly expect to get a Bill more advantageous to their own interests.

### THE LAST CHANCERY ORDERS.

It may be found useful briefly to point out the effect of the last Chancery Orders, which were printed at length, *ante*, pp. 60 & 84. By the *first* of the orders of the 9th of May 1839, when the plaintiff prosecutes the defendant in the Court of Chancery and also in some other Court in the same matter, the usual order for the plaintiff to make his election may be obtained, but the time at which this may be done is regulated and provided for. The *second* allows the plaintiff in an injunction cause to obtain, as of course, an order for leave to amend, with an undertaking to amend within one week from the date of the order. It further authorizes the defendant, although he may not have put in his answer, to move the Court to dissolve the injunction, on the ground that the bill as amended does not, even if the amendments be true, entitle the plaintiff thereto. The *third* allows the plaintiff, either where an injunction has not been obtained, or has been dissolved, to amend his bill, and move for an injunction, if the defendant shall not plead, answer, or demur to the amended bill within eight days after appearance. By the *fourth*, foreclosure causes may be advanced for hearing under the same rules as any other causes. The *fifth* (which is the most important of all) allows the plaintiff by motion, *at any time after appearance*, to refer to the Master any preliminary accounts or inquiries, which must be taken and made before the rights of the parties can be ascertained. By the *sixth*, applications as to irregularities in orders of course made by the Master of the Rolls are in the

first instance to be made to the Master of the Rolls.

The Orders of the 10th of May relate entirely to the issuing the writs of *fiery facias*, *elegit*, and *venditioni exponas*,—forms of which are given.

### THE CRIME OF BURGLARY.

To constitute the legal crime of burglary, it has been laid down in the text books that it must be committed at night. See 4 Bla. Comm. 224; but by the 1 Vict. c. 86, it is provided that so far as the same is essential to the offence of burglary, the night shall be considered, and is thereby declared to commence at nine o'clock in the evening of each day, and to conclude at six in the morning of the next succeeding day. It has also been supposed by some that it must be committed from the outside, but this is not so. Thus, where one of the prosecutrix's servants in the house opened his lady's chamber door which was fastened by a brass bolt, with design to commit a rape, *King*, C. J., ruled it to be burglary, and the defendant was convicted. *Res v. Gray*, 1 Stra. 481. So, where a servant lay in one part of the house and his master in another, and between them was a door at the foot of the stairs, which was latched: the servant in the night time drew the latch and entered his master's chamber to murder him, this was holden to be burglary, 2 East's P. C. 488. So, where a thief enters a dwelling-house in the night time through the outer door being left open, or by an open window, yet, if when within the house, he turn a key or unlatch a chamber door, with intent to commit a felony, this is burglary. *Ibid.* But according to C. J. *Hale*, if a lodger in an inn should in the night time open his own chamber door, steal goods and go away, the offence would not be burglary, on account of his having a kind of special property and interest in his chamber, and the opening of his own door being, therefore, no breaking of the innkeeper's house, 1 Hale P. C. 554; and 4 Petersd. Abridg. 739. However, this is altered by a recent statute, 7 & 8 Geo. 4, c. 29, s. 11, by which it is enacted, that if any person entering a dwelling-house with intent to commit felony, or being therein commit felony, and in either case break out in the night time, such offence shall be deemed burglary. And in the following case it has been very recently held that

breaking out, as well as breaking in, may constitute this crime.

"The prisoner was indicted for burglary, in having broken out of the house of Aaron Collins. The prosecutor, Aaron Collins, said on the night of the 31st December, 1838, the prisoner lodged at my house. Before going to his bed on that night, I had secured my house. Between three and four o'clock on the morning of the 1st of January, I heard the prisoner get up and leave the house. Mrs. Collins, the wife of the prosecutor, proved, that when she got up on the morning of the 1st of January, she missed a jacket, which was afterwards found in the possession of the prisoner; and she also proved that at between three and four o'clock in the morning, she heard the prisoner go down stairs, unbolt the back door of the house, and go away. *Allen*, for the prisoner.—I submit that this is no burglary. *Erskine, J.* If a person commits a felony, and breaks out of the house in the night time, that is burglary although he might have been lawfully in the house. There are several cases of guests at inns who have been convicted of burglary, *Allen*.—I believe that it has always happened in such cases that the party went into some other person's room, or entered some place where he had no right: but here the prisoner being a lodger, he had the right of egress, and if there had been no stealing he would not have been guilty of any wrong in leaving the house, and would have been justified in all he did. *Erskine, J.*—If a lodger has committed a felony, and in the night time even lifts a latch to get out of the house with the stolen property, that is a burglarious breaking out of the house: it is the purpose for which he undoes the fastening that makes the act unlawful. Verdict: Guilty. *Reg. v. Wheelden*, 8 C. & P. 747.

## PRACTICAL POINTS OF GENERAL INTEREST.

### THE LIABILITY OF THE HUSBAND AFTER A SEPARATION.

A HUSBAND is liable for the contracts entered into by his wife during coverture, but his consent must be either expressed or implied. Cohabitation is presumptive evidence of the assent of the husband, although it may be rebutted by contrary evidence. *Per Bayley, J.*, in *Montague v. Benedict*, 3 B. & C. 635. But when the husband and wife live apart by mutual consent, if upon separation he provides an allowance for her, suitable to his fortune and rank in life, (which is a question proper for the consideration of a jury) and afterwards pay it regularly, he will be exempt from all liability for her debts. *Todd v. Stokes*, 1 Salk. 116; *Hodgkinson v. Fletcher*, 4 Camp. 70; *Den-*

*nis v. Sargeant*, 6 C. & P. 419; and since it is the payment of the allowance which discharges him, it is immaterial whether it is secured by deed or a written agreement or not, provided it be regularly paid.—*Hodgkinson v. Fletcher*, 4 Camp. 70. But when a tradesman brings an action against a husband for goods furnished to his wife while she was living apart from her husband, it is for the tradesman to shew that her so living proceeded from some cause which would justify it. Thus in an action of this kind, it being proved that although the husband and wife lived apart, the wife frequently went to the husband's house, and staid there sometimes as long as half an hour, the plaintiff (the tradesman) was nonsuited. *Mainwaring v. Leslie*, 2 C. & P. 507. In a subsequent case, the rule was thus laid down by Lord Tenterden.—"If a married woman be living separate and apart from her husband, it is the duty of tradesmen to inquire under what circumstances the separation took place before they part with their goods; and if a tradesman do part with his goods to a woman living apart from her husband, the *onus* lies on him to prove that the separation took place under such circumstances as will entitle him to recover the price of goods against the husband. There is no such proof here, and if a tradesman will trust any woman that comes into his shop, he must do so at his peril. *Clifford v. Laton*, 3 C. & P. 15.

The last case on this point is that of *Dixen v. Hurrell*, 8 C. & P. 717, in which Mr. Justice Coltman thus laid down the law.—"If a wife elopes with an adulterer, or even if she elopes from her husband without cause, the husband is not liable upon her contracts. If, on the contrary, the wife is driven from her husband's house by his misconduct, she can charge him with the amount of suitable necessities. This is, however, a sort of middle case, and it appears from the authorities cited, that in cases of this class, the opinion of Lord Tenterden has fluctuated. My opinion is, that if the husband and wife separate by mutual consent, the husband is liable for necessities supplied to the wife, unless she has a competent provision, either from her husband, or from her own resources. What sum per annum amounts to a competent provision, must depend on the station of the parties, and the circumstance of each particular case; and what would be a very competent provision in one station, and under one set of circumstances, would not be so on another. Here it appears that the



defendant's wife had a separate provision, to an amount between 70*l.* and 80*l.* a-year. You will say whether that was reasonably sufficient for her as the wife of a person who kept a china shop in the City Road. The question is this: Had the defendant's wife a competent provision independent of her husband? If she had, the defendant is not liable. If she had not, the defendant is liable, unless the plaintiff agreed that he would not charge the defendant for what was supplied to the defendant's wife. Verdict for the defendant—the jury considering the provision to be sufficient. *Dixon v. Hurrell*, 8 C. & P. 717.

## CHANGES IN THE LAW.

IN THE PRESENT SESSION OF PARLIAMENT.

### No. III.

#### EXCHEQUER OF PLEAS INQUISITIONS.

2 & 3 Vict. c. 22.

*An Act to enable Justices of Assize on their Circuits to make Inquisition of all Pleas in the Court of Exchequer of Pleas which shall be brought before them without a Special Commission for that purpose.* [4th July, 1839.]

1. *Stat. West. 2. 13 Edw. 1, c. 30. Justices of Assize may try Causes, &c. pending in the Exchequer without a special commission.*—Whereas by the statute commonly called "The Statute of Westminster the second," passed in the thirteenth year of the reign of King Edward the first, the Justices of Assize on their several circuits are empowered to take inquisitions of all pleas in the Courts of Queen's Bench and Common Pleas: And whereas it is expedient to extend the said power to pleas in the Court of Exchequer, in order to put an end to the practice which has hitherto obtained of issuing a separate commission from the said court upon each record brought therefrom before the Judges of Assize: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act it shall be lawful for all justices of assize, and they are hereby authorized and empowered on their respective circuits, to try causes and take inquisitions of pleas pending in the Court of Exchequer of Pleas which shall be brought before them, and to proceed thereon in like manner as they can or may do in respect of causes or pleas pending in the courts of Queen's Bench and Common Pleas under and by virtue of the said act, or by any other law, statute, or usage whatsoever, and that it shall not be necessary hereafter to issue any commission from the said court of Exchequer of Pleas for that purpose.

## ABSTRACT OF THE BILL TO AMEND THE JURISDICTION FOR THE TRIAL OF ELECTION PETITIONS.

*Suspension of 9 Geo. 4, c. 22, and part of 42 Geo. 3, c. 106, s. 1. s. 92.*—The proposed bill is temporary, to come into force at the beginning of the next session, and to continue until the end of the second session of the next parliament; during this time the existing act (9 Geo. 4, c. 22, and part of the Irish act 42 Geo. 3, c. 106,) is to be suspended.

*Presentation of Petitions, s. 2—21.*—Petitioners are to be required to enter into their recognizances before presenting the petition. An officer of the house is to be appointed by the Speaker, called "the examiner of recognizances," who will certify, by endorsement on the petition, that this has been done. Instead of finding sureties, an option is allowed of paying money to the same amount into the bank of England. During seven days, objections may be lodged against the sureties; and if upon examination by the examiner of recognizances they are found insufficient, the names will not be allowed to be changed, but the order for considering the petition will be discharged.

In the single case of death of a surety, that defect may be cured by lodging money in the Bank of England. In all other cases the petitioner must abide by the security offered by him before the petition was presented.

Voters may be admitted to defend the return, either with the sitting member, if they petition within fourteen days after presentation of the petition, or, in his room, if they petition within thirty days after notice of his not intending to defend his seat is published in the gazette.

*Constitution of General Committee, ss. 22—35.*—At the beginning of every session the Speaker is to nominate a committee of six members (to be called the General Committee of Elections), being neither petitioners nor petitioned against, and willing to serve. In case of disapproval by the house of the committee chosen, a new nomination is to be made. Vacancies in the committee are to be supplied in the same manner. All election petitions, in which the sureties are reported unobjectionable, are to be referred to this committee, who are to choose select committees for trying them. The general committee will have no power to do any act, unless four members of it meet together, or to choose a select committee, unless four members are agreed.

*Choice of Select Committee, ss. 36—63.*—At the beginning of each session the names of all the members of the House are to be read over by the Speaker: all claiming to be above sixty are to be struck out. Petitioners and members petitioned against, also members alleging special excuses allowed by the House, are to be distinguished as temporarily disqualified, or excused. The general committee will then divide the list into five panels, the order of whose service will be settled by lot at the table.

The panels will be printed, and distributed with the votes. The general committee will correct the panels from time to time, by inserting new members, &c.

Once in each week, if any petition be then pending, the general committee will meet to choose select committees, and three weeks notice of the day of their meeting will be sent to all the parties. Lists of voters objected to must be lodged by each party with the clerk of the general committee ten days before the day appointed for choosing the select committee.

On the day so appointed, the general committee will choose seven members from the panel then in order of service, taking care not to choose either any member then generally disqualified or excused, or any member who had voted at the election, or who is a party to the petition, or related within certain degrees to any of the parties, so far as these special grounds of disqualification can be ascertained by the general committee.

The parties will be called in, and the names read to them. Either party may object to any names, on the grounds specified in the bill, but on none other. If an objection is sustained, a new committee must be chosen. If no objection is made by the parties, notice will be sent to the members chosen; and they also, on the following morning, each for himself, may allege disqualification on the grounds specified in the bill, but on none other. When all objections are disposed of, the select committee will be reported to the House.

*Proceedings of Select Committees*, ss. 64—79.—The members chosen to be of the select committee will attend in their place on the day when the general committee makes its report, and will be forthwith sworn at the table, and directed to withdraw to choose their chairman, and then to adjourn to the following day.

The select committee will sit from day to day, except by leave of the House for a longer adjournment. No member must absent himself without the leave of the House, to be granted only for sickness, or special cause, verified upon oath. In the absence of any member to whom leave of absence has not been granted, the committee must adjourn, and report the absentees to the House. If the committee be reduced below six (by death or unavoidable absence), and continue so for three days, it shall be dissolved, subject to the following excepted cases: if it has met for fourteen days, it may continue with not less than five members; if for twenty-five days, or if it has issued a commission for taking evidence in Ireland, it may continue with not less than four members.

The evidence is to be confined, as to disputed votes, to the lists delivered to the general committee, and to the objections therein stated.

*Costs*, ss. 80—90.—Costs may be awarded to either party by the select committee, if either the petition or the opposition to it appear frivolous and vexatious. Costs may also be awarded with respect to particular votes, in which the proceedings appear to have been frivolous and vexatious. The costs will be

taxed, under the direction of the Speaker, by the examiner of recognizances; and in no case is either party to be liable for any costs of the other party, arising solely from delay in the proceedings of the general committee. The taxed costs may be recovered by an action of debt. Forfeited recognizances may also be estreated in the Court of Exchequer.

*Returning Officer*, s. 91.—The returning officer may be sued, in case of wilful default, for not returning any person who was duly elected.

## NOTICES OF NEW BOOKS.

*Adventures of an Attorney in Search of Practice.* London: Saunders & Otley. 1839.

THIS is an admirable book. It is both instructive and amusing. It contains much judicious advice to the young practitioner, and ably advocates the rights and interests of that branch of the profession to which the author belongs. We were not without expectation that a work of this kind would make its appearance, for which there are doubtless abundant materials. Some years ago we noticed "The Life of a Lawyer, written by himself,"<sup>a</sup> evidently the work of a barrister, from the pages of which we laid before our readers many able sketches of character. It comprised also various professional scenes and incidents, rendering its pages peculiarly attractive. We thought then that whilst a barrister possessed advantages in regard to the more public and important class of cases, and could better describe their forensic management,—an attorney, from his personal and confidential communications with the parties and their witnesses, would have an opportunity of tracing the secret springs of action which precede the development of a case in open Court. We have not been disappointed in this expectation. The present author, who has been actively engaged for twenty-five years, has embodied his experience in the lively delineation of various classes of clients and witnesses, and singular cases, and set forth, with much dramatic effect, many scenes which have no doubt substantially occurred in actual practice.

He first gives an amusing description of his eagerness in commencing practice, and the usual disappointments which attend those who look for very speedy success. His early clients are *individually* described; but after a while he shews them up in *classes*, such as the despondent,—the wrong-head-

<sup>a</sup> See vol. 1, p. 278.

ed,—the angry,—the whimsical,—the collective,—&c.; of each of which he gives a sample, with many curious and “awkward” cases, and is generally very successful in the dialogues which he introduces. Whilst the scenes which take place with clients and witnesses are very amusing, and many of the incidents interesting, they are always preceded or followed by useful remarks or valuable suggestions. For the present we extract the following description of the qualities for which a solicitor should be distinguished :—

“It is rightly assumed that he must possess a certain share of *legal knowledge*; though even here, if I may judge by the prosperity of many, less will serve his turn than is commonly supposed; a liberal education *ultra* the law, is mostly, but very erroneously, regarded as mere accomplishment. I am ashamed to say of my brethren, that I know too many among them, the style of whose composition would disgrace a chambermaid, and the tone of whose manners would exclude them from the butler’s pantry. I know not one however, of this description, who has ever attained, or even aspired to a higher rank in it than that which might be allowed to a sheriff’s officer, or a money-lending Jew. *Honesty*, in the ordinary and limited sense of the term, is generally presumed as a qualification of course, though ill-natured people do say that it is rather an extraordinary professional trait. All however, are agreed, that to a greater or less extent, according to taste and the character of his business, law, general knowledge, and common honesty are required in an attorney: but discuss the desirable a little further, and we find the usual definition given of the desecrated animal is that he shall be “a sharp, clever fellow.” In deference to this favourite notion, I have assumed my *nom de voyage*; yet with the inconsistency of many who travel the continent as captains and colonels (I know one gallant old gentleman at this moment, who designates himself abroad as “Monsieur le Colonel,” in virtue of an old uniform to which he had acquired a title under the volunteer system), I am bold enough to say not only that your “sharp, clever fellows” make your worst attorneys, but that they rarely gain admission to the highest classes of respectable clients: this sounds a little paradoxical, but there is sufficient reason for it. The sort of cleverness which obtains this reputation for an attorney, is to be found in every office on very cheap terms. Every common law or chancery clerk (as a piano that has been *practised* on for two or three years, arrives at its prime) is after a short probation, pre-eminent for it; and no office of any extent in business is without a convenient appendage of this kind, whose special duty it is to set snares and catch an opponent tripping: whenever he or his employer is at fault, the pleader or a junior counsel will soon make a skilful cast for the scent. This conflict of wit for petty advantage often occurs

among the subordinates of an attorney’s office; and where (though that is very seldom,) the client reaps any real benefit from it, the principal, by reflected honour from his clerk, is voted a “sharp and clever fellow.” Among respectable men, however, these paltry contrivances are despised, and also discouraged; because they tend to create angry and vindictive feeling, without any counterbalancing advantage, except, perchance, two or three pounds that may be successfully extracted from the pocket of an opponent in the shape of costs, with as much credit, though more safety, than by picking it of a watch and seals. It generally happens that clerks who spend their noviciate in learning this cleverness, pique themselves so much on the acquisition of it, that they learn but little else; and when they enter upon practice on their own account, have no other accomplishment to bring to their aid. Hence their minds degenerate; their business is low, because it is chiefly in low business that such smartness enables them to shine; and even low and vulgar clients very soon discover, that while in the progress of a cause, these “sharp clever fellows” are daily met and defeated by pleaders and counsel, if not by attorneys, as sharp and clever as themselves: their sharpness is frequently turned upon their employers, of whose dulness they can render very profitable account! The truth is, that it is only clients of very doubtful honesty, and who have business to transact which demands the protection of those resources to which knavery alone will stoop, that require the aid of these “sharp, clever men;” but such clients are not worth having on any terms, and if you have too many of them, you will secure a reputation for cunning and address that will keep more respectable connexions at a respectful distance. If I were asked to define the professional character to which I should most willingly trust myself, in an affair of delicacy or importance, involved in intricate details of circumstance, and entangled perhaps, with much of personal and private feeling, I should select a man distinguished by calm energy, a clear head, and sound common sense: if in addition to this, he were gifted with a cheerful disposition, and marked, not by fastidious delicacy of mind, but by that enlarged honesty which is usually intended by “honourable principle,” I should consider that he possessed the finest qualities for a useful attorney. Of course there are not many who come up to this standard; but in proportion as they approach it, and as the general nature of their business implies that they keep it constantly in view, a client may consider himself safe in their hands. If my work were not necessarily anonymous, and anonymous praise, however sincere, goes for nothing, I could with ease name a hundred solicitors that well deserve to be classed with such as I have here described.”

The *collective* client is thus characterised.

“There are many varieties of this species: some-times it is found in the form of parish vestries; sometimes of a bench of magistrates;

sometimes of a professional or scientific council; at others of a coffee house assemblage of rapacious creditors or of an insurance or railroad board. In whatever form the monster appears, it requires Herculean powers to encounter it. It has fallen to my lot to meet it in every shape, yet I scarcely know how to prepare myself, much less others, for the conflict. To drop metaphor; we must recollect that when men assemble in considerable numbers to effect any common object, but not subjected to any rigorous discipline because they assemble spontaneously, and therefore on terms of republican equality, each brings to the discussion not merely his peculiar knowledge, but his peculiar temper and absurdities: the most good natured man is voted to the chair, and unless firmness and good sense mark his deportment, his good nature is in his own way and the way of every body else; passion breaks loose; absurdity gains ground, (for every man is more or less absurd on some point), the chairman appeals to the good sense of the board, long after every symptom of it has vanished, and then the *dernier resort* is to the authority of the legal adviser. But this officer usually stands in a very unlucky predicament. He has an acknowledged interest in the question of costs, on every important matter that provokes debate. Collective bodies are destitute of delicacy or shame; where reproach is distributed among many, each man's share becomes imperceptibly light: hence the most cutting sarcasms and illiberal sneers are unsparingly vented on professional rapacity, by men who would blush individually to be suspected of a shabby economy. In their official chairs, however, they "are trustees for the public;" and under this convenient salvo, they uphold penurious parsimony as a laudable duty that they are bound to practise. Now to all this, the attorney must submit with patience,—nay, with cheerfulness; for if he appears to wince under the lash, punishment is redoubled; should he be provoked into a retort, he challenges a trial of official strength; for there is nothing that assembled officials like to display so much as their power. Yet their attorney must answer every appeal with calm good-humour, as well as deferential gravity!"

Several amusing specimens are given of the meetings of the "collective wisdom" displayed by the Board of Directors of a Mining Company, which illustrate the above reflections, but we have not room to insert them.

The different kinds of witnesses, both voluntary and reluctant, are well characterised, and the proper methods of dealing with each class are judiciously pointed out. It is justly observed that a prudent attorney will never put himself into the witness-box if he can avoid it, but the author was twice in this situation.

"An important letter had been lost in my office; lost by that excess of precaution which

one sometimes takes with very important documents. I had locked it up in some drawer for security, and on the eve of trial could not discover where I had placed it; but when engaged in consulting counsel on the case before I commenced the action, nearly three years before the cause was tried, I had introduced a copy of this letter into the statement, and had read the letter to my clerk while he transcribed it. I tendered this copy in evidence: of course Scarlett opposed its admission, for nearly the whole question of damages turned upon it.

"Do you commonly read letters for your clerks to copy, Mr. Sharpe?"

"No, Sir."

"It would be rather an inconvenient practice?"

"Certainly."

"Did you examine this copy after he had made it?"

"Not that I remember; certainly not to check its accuracy."

"Then you cannot *swear* to its accuracy?"

"I cannot; but I believe it to be accurate."

"Why?"

"Because it consists of but five lines, so there is not much room for error; and I had every inducement to be accurate in consulting counsel on the merits of my client's case."

"Did you shew the original letter to your counsel?"

"Most likely I did. I cannot be certain at this distance of time, but I have no doubt I did."

"Then you did not at *that* time rely sufficiently on your belief in its accuracy to trust to the copy only?"

I saw the drift of the question, and hesitated; of course I received the usual rough salute.

"No hesitation, Sir; did you *then* believe the copy to be accurate?"

I still demurred—repeating the question, but not answering.

"Come, Sir! no fencing with me; as an attorney you ought to know better."

I remained silent, pondering over the question.

"I *will* have an answer, Sir; did you *then* believe the copy to be faithful?"

"To what time do you refer?"

"When you consulted counsel."

"Three years ago?"

"Yes, Sir; three years ago."

"Then I will not answer your question unless his lordship decides against me."

My own counsel ought to have made the objection, but, from discretion sometimes, they are too tardy in protecting a witness. Lord Denman, however, (who knew me well, and from whom I had never but once received a harsh word, and even then I believe he designed it kindly, though it was unjust) came to my aid.

"What is your objection, Mr. Sharpe?"

"Your Lordship will perceive that the question does not refer to *present* belief, nor to a past *fact*, but to the impression existing on my mind three years ago; how is it possible for any man to state with certainty the precise

limits of his belief, not as to what were the occurrences of to-day, or yesterday, but as to what he believed at a period so remote?"

His lordship reflected for a moment, and over-ruled the question.

"It is not a fair one, Mr. Scarlett. Go on."

We shall take another opportunity of laying before our readers some further specimens of the author's talents, both in the grave and the gay, and recommend the work (in the language of its dedication) "to all attorneys who want a client (or wish to retain him) and to all clients who want an attorney."

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#### ON THE ANNUAL INDEMNITY BILL.

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##### STAMPING OLD ARTICLES OF CLERKSHIP.

WE observe by the Votes and Proceedings of the House of Commons, that a petition has been presented from a person who states he was articulated in the year 1808, praying that a copy of his alleged articles may now be stamped and enrolled. It appears that a contract on unstamped paper was entered into for a service of six years, and by which it was provided that the party should be re-articled at the end of twelve months on the proper stamp duty. Such intended articles, however, were not executed, but the person continued in the attorney's office for six years. It is stated that in 1821 the attorney entered into the business of a wine merchant, and failed, and that the articles cannot be found. The applicant says he made a copy of the articles during the time he was serving under them, and he desires that this copy may now be stamped.

The 9 G. 4, c. 49, s. 2, which passed 15th July, 1828, provides that articles of clerkship, executed prior to 22d June 1825, might be stamped before the last day of Hilary Term 1829, on payment of the duty and a penalty of 5*l*. Why did not the party avail himself of that act? We question the justice, at a great distance of time, of having such articles stamped, and putting the parties on the same footing as those who paid their duty at the time they were articulated. We can understand that it may be very convenient to postpone the payment of the duty till they are about to be admitted, but the law should be equal in its application. The statutes require the duty to be paid and the articles to be registered within six months. In the present case there is

neither payment of duty nor registration, and this from no *inadvertence*, against which alone these Indemnity Acts are intended to provide. If it be proper to listen to cases of this kind, there should be a general law on the subject, and its due administration should be left to the Judges, who may inquire into the facts, and ascertain that the case deserves relief. Neither Parliament nor the Stamp Office possess the means of investigating such cases.

It is proper also to observe that these Annual Indemnity Acts are carried through the House as Private Bills, and copies cannot be procured at the printer's. If clauses are introduced, repealing in effect public statutes, they should be previously printed for general information. It was only by accident that we became aware of the intended innovation.

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#### THE BILL FOR GIVING EXCLUSIVE AUDIENCE TO SERJEANTS.

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WE have received some communications urging the expediency of this measure, for the purpose of removing the great grievance of counsel practising in all the courts, whereby it frequently happens that several records in one court must be withdrawn because the leading counsel are engaged in another court. We adverted to this when writing on the subject last week, and are aware that it is difficult to choose between the two evils of not having a *separate bar* on the one hand, or being deprived of a Queen's Counsel *in banco*, who has conducted the cause at *Nisi Prius*. It is said that if the ancient practice of the Common Pleas were restored, it would be easy to select additional counsel who might be willing to take the degree of the coif, and afford a sufficient choice of able advocates to remove all ground of complaint. The question should certainly be well weighed on both sides. Seeing the exception in the bill in favor of cases tried at the *assizes*, we did not perceive the rational grounds for depriving *London and Middlesex* of a similar advantage. It is urged, however, that at the *assizes* there being very few serjeants on any circuit, and all of whom may be retained for a plaintiff, it would be palpably unjust to exclude the other counsel from audience on motions for new trials. This being admitted by the proposer of the bill, the reason, though certainly in a less strong degree, applies to *London and Middlesex*, unless a creation of serjeants took place to

a considerable extent, and counsel in whom the suitors and practitioners would confide, should be induced to take the coif. We confess that we cannot but regret the practical extinction of the ancient order of serjeants at law which would follow the keeping the court entirely open to the whole bar; but the interests of the suitor must not be sacrificed to any professional consideration. The bill has made no progress during the past week.

## ON THE NEW FORMS OF WRITS.

To the Editor of the *Legal Observer*.  
Sir,

I trust you will excuse my so far trespassing on your valuable time as to call your attention to the following apparent discrepancies in some of the new forms of writs framed under 1 & 2 Vict. c. 110, s. 30, by the Common Law Judges. In Vol. 17 of your excellent periodical, p. 280, Form No. 3, (elegit on rule for payment of money and costs) the sheriff is commanded to deliver such lands as the debtor was seised of, &c. on a day denoted in the note as the day on which the costs of the rule were taxed; and in the previous part of the writ it is stated that the lands are to hold to the creditor until the said two several sums of £ and £, (the money and costs) with interest from the day on which the costs of the rule were taxed, are levied. In the preceding Form, No. 2, (elegit on rule for payment of money merely) the sheriff is commanded to deliver the lands of which the debtor was seised on the day on which the rule was made. Why is not the rule for payment of money and costs, on which Form No. 3 is grounded, made to bind the lands from the day on which it was made, equally with the rule for payment of money merely (Form No. 2)? or why should the addition of costs put the former rule in a worse condition than the latter in this respect?

Again, in Form No. 3, why is not the interest on the money to come from the day on which the rule was made, and the interest on the costs from the day of taxation, instead of being respectively made to accrue from the latter day merely? These discrepancies will appear more striking, on comparing the forms above referred to with some of the new Chancery Forms; *ex. gr.*, in Form No. 3, (*fi. fa.* on a decree or order for payment of money and costs) Vol. 18, Leg. Obs. 85, the interest is expressed to accrue on the money from the date of the order—on the costs from the date of the Master's certificate. In Form No. 8, (elegit on a decree or order for payment of money and costs,) *ibid.* p. 87, the order binds the lands from the day on which it was made, and interest is to accrue on the money from the day on which the order was made—on the costs from the date of the Master's certificate.

Now, I certainly cannot understand why these differences should exist between the Common Law and Chancery writs, particularly as in the above cited act, s. 18, rules of the Superior Courts of Common Law and decrees and orders of the Courts of Equity, &c., seem to be placed on the same footing, and to have the same effect given to them. *Vide* also ss. 13, 17. One would imagine that, with reference to Common Law rules, and Equity decrees and orders having the effect of judgments, as far as regards their binding operation on the lands of the debtor, the day on which the rule, decree, or order is made, would be deemed analogous to the day on which judgment is signed, with one single exception, *viz.* where the rule, decree, or order is merely for the payment of costs to be taxed, in which latter case, the day on which the Master's allocatur or certificate is made, and not as in other cases, the day on which the rule, decree, or order is made, will be deemed analogous to the day of signing judgment (*vide* 18 Leg. Obs. 87, Form No. 7, elegit on a decree or order for payment of costs).

Again in 17 Leg. Obs. 298, form No. 9, (*Fi. Fa.* on an order of the Court of Queen's Bench for payment of money and costs,) ought not the interest to be expressed to accrue on the money from the day of the rule being made, and on the costs from the day of taxation, instead of making the interest on both sums accrue merely from the day of taxation? In the same form, (No. 9, *supra*) between those words "made" and "interest" ought not the following words to be inserted, *viz.*, "the said sum of £. (the costs) together with," for in the form as it now stands the sheriff is merely commanded to cause to be made &c., £. (the money) and £. (the costs). Compare the Chancery Form, No. 3, (*fi. fa.* on a decree or order for payment of money and costs, 18 Leg. Obs. 85,) which is exactly parallel.

I hope that some of your numerous readers will take the trouble of accounting for these apparent inaccuracies. P.

## GRIEVANCES OF THE PROFESSION.

### ABSENCE OF COUNSEL.

Mr. Editor,

SOME reform in relation to the customs of counsel is surely necessary. A cause in which I was concerned for the plaintiff stood No. 2 in the paper. My witnesses were all in Court. My senior counsel was in the Court of Common Pleas, and my junior counsel not in Court at all. The cause was called on. I had sent for my leader, and I applied to the Judge to wait till he came; but his Lordship, in those tones which the Bench sometimes adopt towards attorneys, answered, "Do you expect me to go and fetch him?—I don't see why I should wait;" and would have nonsuited the plaintiff had I not withdrawn the record.

My client will now have to pay the costs of

the day, which (as the defence is most vexatious) will be made as large as possible.

Does not this state of things deserve reprobation? Is it not the duty of a counsel, when he accepts a brief, to be in Court at the time, or hand his brief over to some one who will attend? But counsel lay down one invariable rule, that under no circumstances are they to blame.

CIVIS.

#### ARREARS OF EQUITY REPORTS.

Sir,

Amongst the many grievances constantly pointed out by your correspondents, there is one which I think has never yet been alluded to, but which claims the serious consideration of every branch of the profession. The grievance to which I refer is the arrear in which the Reports in the Courts of Equity are continually kept.

Now it cannot be denied by any one, that it is of the utmost importance that those decisions which regulate both the law and practice of the Courts should be made known to the world as soon as they are given; especially when the consequences of their non-appearance are so serious to both the practitioner and the suitor. How many instances do we every day see of applications made by a party, at the time confident of success, because his application is agreeable to the practice, as it appears from the latest published reports; yet when the application is made he finds that there is some recent decision, not yet reported, (although it has been come to a-year or more previously, and which can only be verified by taking the trouble to search the Register's book,) ruling directly contrary to the latest reported cases, saddling the unsuccessful party with costs, which are of right payable by the professional man himself? The consequence of this uncertainty is, that every one is deterred from making motions, either for the purpose of expediting a suit or otherwise, solely because there is a chance that some unreported case, which the research of his opponent may find out, may directly negative his application.—All which inconvenience might easily be removed by the regular issuing of the reports.

I think this is a subject which requires looking into by the profession at large; and as we see that by the issuing of one or two pamphlets on the subject of the delay of the business in the Courts, a second Vice Chancellor is likely to be appointed, so, I have no doubt, that if this question were to be mooted in the proper quarter, the evil of which I have spoken would soon be remedied.

SCRUTATOR.

[On this subject, we may refer to a case which we reported on the 8th of June, (see p. 105, *ante*), wherein the Master having refused

permission to amend a bill after the time when the answer was to be deemed sufficient, the Vice Chancellor (before whom there was a motion to dismiss the bill) granted leave to amend, and made no order to dismiss. The Lord Chancellor, on appeal, held that the Masters have no power to dispense with the strict letter of the General Orders, and that the motion to dismiss was regular; but as the order to amend had been made, his Lordship allowed it to stand, the plaintiff undertaking to speed the cause. We believe this important decision has not been reported except in this work. *ED.*]

#### TAXES AND FEES PAYABLE BY ATTORNEYS.

We have been requested to state the various impositions under which the attorneys and solicitors labour in the way of stamp duty and fees on their articles, admission, &c. and believe the following may be relied on:—

Stamp Duty on articles.	£120	0	0
Stamp Duty on counterpart.	1	15	0
Affidavit of execution of Articles, stamp 2s. 6d. oath 2s.	4	6	
Registry of articles at Master's office . . . . .	5	0	
Affidavit, stamp, oath, and registry of assignments (if any) each	9	6	
Affidavit stamps of affixing notices and payment of duty &c. . . . .	5	0	
Swearing affidavits 1s. each deponent in Court, or at Chambers 1s. 6d. . . . .			
On leaving articles of clerkship with Examiners . . . . .	5	0	
For Certificate of fitness . . . . .	15	6	
For Judge's fiat 10s. 6d. and filing affidavit, 1s. . . . .	11	6	
Oath in Court . . . . .	1	0	
Usher on signing the roll . . . . .	5	0	
Signing the rolls in Common Pleas and Exchequer, 5s. each . . . . .	10	0	
To Master's Clerk for certificate of enrolment . . . . .	5	0	
Admission stamp . . . . .	25	0	0
Fees on Chancery Admission as a Solicitor . . . . .	1	17	0
Commission to swear affidavits in each Court, about 35s. . . . .	5	5	0

Commission as master extra in				
Chancery, about*	8	12	6	
Oath on admission in Bankruptcy	0	6	0	
Certificate duty for the first three				
years, in London	6	0	0	
after three years	12	0	0	
Country certificate, for first three				
years	4	0	0	
after three years	8	0	0	

## THE STUDENT'S CORNER.

## MERGER OF AN ESTATE TAIL.

Mr. Editor,

I beg to make the following remark on the merger of an estate tail after possibility of issue extinct. "Persius," in the present volume of your valuable work, p. 101, says it will merge, and gives an instance. In the case put, *C. D.* does not take an estate tail after, &c. from *A. B.*, for he, *C. D.*, becomes by such transfer merely tenant *pur autre vie* of the estate, and of course such an estate will merge in *C. D.*'s estate for his own life. Suppose *C. D.* had conveyed his life estate to *A. B.*:—here I apprehend merger would not have followed, because the privileges which he enjoys in common with a tenant in tail would have been lost thereby. But when *A. B.* conveys to *C. D.*, no harm arises, for *A. B.* cannot transfer his privileges to another, they belonging exclusively to the tenant in tail, after, &c. which estate always arises by the act of God alone, and in truth it may be said, that the privileges being in *A. B.* as tenant in special tail, neither the law nor God will ever take them from him; but when *A. B.* conveys to *C. D.*, here *C. D.* is not in by the act of God so as to be tenant in tail, after, &c., but by the act of *A. B.*, and he, the said *C. D.*, never having had the privileges, has no right to complain, because the law considers them as not transferrable, but only as inherent rights belonging solely to the tenant in tail, after, &c. against merger. See Rol. Rep. 178; *Lewis Bowles' case*, 11 Rep. 81; 15 Ves. 419; 12 East, 209.

I apprehend the case is this, that *A. B.*'s estate will only merge when a fee or fee tail comes to him either by descent or purchase, and that no other estate coming to him, will bar him of his privileges. But if *A. B.* conveys to a person having the remainder in fee—fee tail or for his own life,—then merger of *A. B.*'s estate ensues. As "Persius" put the question, his view of the law is right, for merger certainly will take place where tenant in tail, after &c., conveys to a remainder-man for life; but not when the estate for life comes to him either by descent or purchase.

OMICRON.

\* If at a private seal 3s. 6d. more, in the country 4l. for three years, and afterwards 8l. If Gazetted, about 14s. more, (but there is no occasion for this to be done.)

SELECTIONS  
FROM CORRESPONDENCE.

## CONFLICTING DECISIONS.

Sir,

I HAVE often heard of "the glorious uncertainty of the law," but never until now did I see it in such glaring terms. I have now before me the respective decisions of the Master of the Rolls and the Vice Chancellor on the same point, but yet in a different manner. I mean the cases of *Holme v. Williams*, 8 Sim. p. 557, and *Smethurst v. Longworth*, 2 Keen, p. 603; in the former of which the Vice Chancellor decided that a mortgage could be made under 1 W. 4, c. 47; and in the latter, the Master of the Rolls decided that it could not. Whether either of the cases have been appealed from I am ignorant; but if any of your numerous readers could point out any case by which future litigants may discover the right path, it would be very desirable.

J. E.

## ADMITTANCE INTO CRIMINAL COURTS.

Sir,

As there appears so much difficulty in Solicitors getting admittance into the Central Criminal Court, could it not be obviated, by every solicitor who wanted admittance, taking his stamped certificate and exhibiting it to the usher, for no one but a solicitor or his clerk could get a certificate. I think in this way the difficulty may be got over.

F. L. T.

## INCONVENIENCES IN ASSIZE COURTS.

Sir,

I have lately read some letters in your Legal Observer on the propriety of attorneys wearing gowns. Your last correspondent takes it up on the grounds of "distinction of society" and "honour to the Court;" but I beg to add the *usefulness* by way of distinction. At the last Oxford Assizes I had to prosecute a prisoner; I went to the Town Hall, but when I got there the door-keeper would not let me in. I told him my name, and that I was an attorney attending a prosecution, but to no purpose. I suppose he had been deceived too often. On a second trial I got in by holding my papers up; but the third time I was less fortunate; I was refused and the door shut in my face, and there I must have remained had I not fortunately seen at the other end of the Court a bailiff that knew me. I at once referred the men to him to say if I was an attorney, and at the end of 20 minutes I got in; but will you believe me, even after that, having to collect my witnesses, I went out, and in returning I was a fourth time refused!

When I got into the Court I found many attorneys standing, not being able to get seats,



the seats appropriated for them being occupied by others than attorneys. The attorneys attending the assizes the next day petitioned the Judge for their seats; but his Lordship said he could give them no redress.<sup>a</sup>

If gowns were worn by attorneys, the doorkeepers would know them from other persons and admit them. I believe they mistook me for an Oxford gowns-man, and thinking from my appearance I was too young for an attorney. So too would they be enabled to exclude any but attorneys from the seats which ought to be for their use.

When I first felt the inconvenience (for this was not the first or second time,) I thought that being supplied with tickets would answer the purpose of *distinction*, but they would be easily transferrable.

F. F.

#### FRANCHISE.—SOLICITORS' OFFICES.

Sir,

None of your correspondents on the incapacity of solicitors to vote for members of parliament in respect of their offices in cities and boroughs, advert to the necessary consequence of their being entitled to the franchise for the county election, if the rent be 50*l.* or upwards per annum. Many solicitor's will probably prefer voting for the county, but their claims must be sent to the overseers on or before the 20th of July.

C. T. S.

#### ORDERS TO ARREST.—ATTENDANCE AT JUDGE'S CHAMBERS.

Sir,

As I have always found your pages open to the exposure of real grievances in the profession, I trust you will allow me to add to the many, one of no ordinary extent, and which calls for immediate correction.

Within the last fortnight, I have had to apply to a judge under the 3d section of 1 & 2 Vict. c. 110 (the Act for Abolition of Imprisonment for Debt on Mesne Process), for a *capias* in four several cases, and on three of those occasions have had to wait at the Judges' chambers till after three o'clock, before I could obtain a hearing; the clerk declaring that no *ex parte* case could precede the numerical order of summonses. The consequence was, I was too late for the Seal Office, which closes at three o'clock. It is well known that in all cases where a *capias* is applied for, the debt is considered desperate; were it otherwise, the case would not justify the mode of proceeding. Is then the law, which in spirit is a protection to the creditor, to be thus nullified. In one case, having waited from 11 till 4 o'clock to get access to the Judge in course attending at chambers, I at last went before another judge who arrived at three o'clock, and made known

to him the fact of my having waited so long. His reply was, "The delay might be of serious consequence." It was so, for it happening on the 19th of June (the day following being a holiday at the law offices), I was not enabled to get my *capias* sealed till the 21st. Immediately on procuring it, I sent it into the country, but my client informed me that the defendant had moved on to another county, and was secreting himself there; and that therefore a fresh *capias* must be obtained. The defendant is not yet captured, and I shall not be surprised to hear by the next post that he has moved out of the country altogether. Should that be the case, my client will be a loser of 153*l.* 7*s.* 3*d.*, independent of the costs; all of which I firmly believe would have been recovered by him by the capture of the man, had speedy justice been afforded.

I will say no more than suggest the extremely simple remedy, that all applications of this nature shall be heard before summonses.

AN ATTORNEY IN THE CITY.

[Is it necessary that there should be any personal attendance by the attorney? Does not the Judge decide on perusal of the affidavit? Ed.]

## NOTES OF THE WEEK.

### THE APPROACHING VACATION.

We are now beginning to see some signs of the Long Vacation. The Summer Circuits have all begun, and the Courts of Equity will close the beginning of next month, and lawyers are beginning to consider what they shall do with themselves in the months of September and October. We do not anticipate, however, that Parliament can be prorogued earlier than a month from the present time. There is still much business before the House of Commons. The Factories Bill has not yet passed through Committee. The Metropolis Police Courts Bill has also to pass through this stage, and there are many other measures, of no professional interest, which must undergo discussion, to say nothing of "supply" which "drags its slow length along;" and then all these measures are to pass the House of Lords.

### ARREARS IN EQUITY.

We fear that the suitor in Equity cannot hope for any relief in the present session as to the present arrears; but the advantage of the discussion will probably be that early in the ensuing session the Lord Chancellor will bring forward a bill for a new arrangement and increase of the judicial strength of the Court of Chancery.

<sup>a</sup> Surely the Judge can make such order as he may deem necessary for the convenient despatch of business. Ed.

## THE PENNY POSTAGE.

WE cannot but hope, on behalf of the profession, that the penny postage may be established; and we should regret that anything should delay it beyond the present year. We have repeatedly called the attention of our readers to the subject, and we are quite satisfied it would be attended with great advantage to the lawyer.

## SUPERIOR COURTS.

## Queen's Bench.

[Before the Four Judges.]

## ARREST.—DETAINDER.—SCIRE FACIAS.

*Where a sheriff's officer arrested a defendant without warrant, and afterwards procured a warrant to be directed to him, but at the suit of another plaintiff, such arrest was held to be illegal, so as not to support a detainer in a third suit against the same defendant.*

*If, however, a party is wrongfully arrested by one person, and while in such wrongful custody is arrested by a different person without collusion with the other, such second arrest will be good, notwithstanding the wrongfulness of the first.*

*Quære Whether a second writ (the return to the first not being filed) can issue on a judgment more than a year old, without such judgment being previously revived by a scire facias?*

In this case a rule had been obtained to discharge the defendant out of custody, on the ground that his arrest was illegal. The affidavits on which the rule had been applied for, set forth, that on the 3d of April the defendant was in the banking house of Messrs. Wright & Co., when a sheriff's officer named Sloman, seeing him there, said that he, the officer, had a warrant against the defendant and must arrest him. The defendant desired to see the warrant, but Sloman said that he had it not about him at that moment, but would shew it to the defendant on getting to Sloman's house. The defendant refused to go: a policeman was called, and the defendant was taken into custody on some fabricated charge. When arrived at Sloman's house, the defendant repeated his demand, and it was then discovered that at the time of the arrest Sloman had held no warrant against the defendant, but that he knew there were warrants out against him. Sloman, however, went out to the house of Nathan, another sheriff's officer, who held a warrant in another cause against the defendant, and obtained from him a transfer of that warrant, and on its authority claimed to detain him in custody. The defendant then removed himself to prison, and when there, several detainers were lodged against him. The present application, and several others of a similar nature, were then made by the defendant, on the ground that the original arrest being illegal, the defendant could not be detained at the

suit of other parties, though they knew nothing of the original illegality.

Mr. Kelly shewed cause against the rule.—No collusion can be proved here between Sloman and the plaintiff in this suit. The illegality therefore, if any has been committed by the sheriff's officer, cannot affect this plaintiff. Without such collusion, the detention by the detaining creditor is good and valid. *Hanson v. Walker*.<sup>a</sup> One of the objections in this case is, that the execution was issued on a judgment more than a year old, and which had not been revived by *scire facias*. That objection, however, cannot be sustained, for one writ was issued, and another writ, that on which this detainer is lodged, is an *alias capias*. A return was made to the first writ, and that return may be carried in and filed at any time. That, therefore, is sufficient. [Mr. Justice Patteson.—You must have a *scire facias* unless the return to the writ is filed within the year.] As to the other point. It is true that in *Barrett v. Price*,<sup>b</sup> it was held, that where the sheriff arrests a defendant in one action, it operates virtually as an arrest in all the actions in which the sheriff holds writs against him at the time; and therefore, if the first arrest was bad, the rest were illegal. But the distinction between that case and the present is, that there the question was as to the right of the sheriff to detain the debtor, he having in the first instance illegally arrested him. Of course the sheriff could not make his own illegal act the foundation of his authority. But here the question regards not the sheriff, but the plaintiff, and the latter cannot be affected by the illegal act of the former. Besides, here the defendant went into custody voluntarily, so far as the plaintiff was concerned, for he got himself removed into the prison of this Court by *habeas corpus*. And further, there was no affidavit in that case negating collusion. Here there is such an affidavit. So far, therefore, as this plaintiff is concerned, this rule must be discharged.

Mr. Kennedy shewed cause on the part of the sheriff.—First, as to the alleged illegality of the writ. The sheriff had returned *not est inventus* on the first writ. But then it is said that no new writ could issue. None need be issued, for the first writ was not executed, and the writ is only necessarily returnable, and at an end, when it has been in fact executed. That is shewn by the 3 & 4 W. 4, c. 67, s. 2. The writ here, in the terms of that statute was made returnable immediately upon execution, and it had not been executed. [Mr. Justice Patteson.—According to that argument, unless you take a party and imprison him, you never need return the writ.] The plaintiff may rule the sheriff to return the writ at any time, but even the consequence suggested would not destroy the argument. The inconvenience, if any, would be the fault of the statute. Writs now by statute returnable immediately after execution, cannot be returned at an earlier period. The sheriff is justified by the writ;

<sup>a</sup> 2 Sir W. Bl. 823.<sup>b</sup> 9 Bing. 531.

the party is not, so that if the Court should think the argument in favour of the defendant, the sheriff will not be liable to costs. The question now is, whether the party is legally in custody of the sheriff. The result of all the cases is, that where the sheriff has obtained the custody of the party, though by a mode which is illegal, he may detain the party at the suit of another plaintiff, provided that that other plaintiff and the sheriff have not colluded together. Collusion is not even suggested here, so that *Barrett v. Price* does not apply, for that was decided on the ground that there was a collusion. That principle was fully adopted in *Goodwin v. Lordon*,<sup>c</sup> where it was held that a defendant who had been tried and acquitted on a criminal charge, was not privileged from arrest for debt on his way home, unless it was shewn that the criminal charge was a contrivance to get him into custody on the civil suit. Without shewing that to be the fact, the defendant cannot take advantage of the informality in the original arrest.

Sir F. Pollock, in support of the rule. First, as to the objection to the writ itself. The judgment in this case was signed on the 25th of May 1837, and a writ issued the same day. According to the affidavit made by the clerk of the plaintiff's attorney, the writ was returned on the 28th of September, 1837, *non est inventus*. That was a writ in the hands of one sheriff. Then it passed into the hands of another sheriff, and then a statement is made by the clerk of the attorney that it was carried into the Treasury, and the return of the sheriff entered on the return. When this was done is not stated on the affidavit, but it is conceded that it was after the detainer. It follows, therefore, that either they have arrested on this writ, though two sheriffs have indorsed the return, and the return has been carried into the treasury, or else that no writ whatever has been returned and filed, and then a writ of *si. fa.* is necessary. The plaintiff cannot get out of this dilemma. The practice on this subject is, that the plaintiff in a personal action, if he omit to sue out execution in time, cannot afterwards have even an *elegit*, without first reviving the judgment by *si. fa.* But there is one exception to that rule, namely, that if the execution is sued out within a year, any other writ of execution may be sued out without reviving the judgment of *si. fa.*, provided that the first judgment has been returned and filed. [Mr. Justice Littledale.—At the time of the case of *Scott v. Whalley*,<sup>d</sup> there might be judgment on an annuity bond and different writs issued thereon, without a revival, and *Ogilvie v. Foley*,<sup>e</sup> was there referred to. And in *Taylor v. Hipkins*,<sup>f</sup> that practice was acted on, and different writs were sued out upon the same judgment more than one year after it had been signed.] Then as to the question of the power to detain the defendant in custody on

one process after he had been illegally arrested on another. It is clear that this cannot be done. In *Spence v. Stuart*,<sup>g</sup> that point was fully settled. And the party lodging the detainer and knowing of the illegality of the original arrest was compelled to pay costs. In *Jacobs v. Jacobs*,<sup>h</sup> where an arrest on a civil process, after an arrest on a criminal charge was permitted, and in *Bartley v. Faber*,<sup>i</sup> which was a case of a similar kind, and where the proceedings were held sufficient, because there was no proof of collusion between the parties, the person making the wrongful arrest and the person afterwards taking advantage of it, were not the same parties. But here it is not so, and the sheriff cannot be permitted to do what is clearly wrong, and then take advantage of it; nor can the plaintiff himself proceed in the irregular manner above noticed.

*Cur. ad. vult.*

Lord Denman, C. J., afterwards delivered judgment.—This was an application to discharge a defendant out of custody as to this suit, on the ground that he had been illegally detained by the sheriff. That objection depended on the fact that he had been illegally arrested by Sloman, who at the time of the arrest had not in his possession any warrant against the defendant. It does not appear at the suit of whom he was originally arrested; but it seems that the judgment was more than a year old, and that no *scire facias* was issued upon it; and one objection taken to the detainer is upon that account. We shall not, however, give any opinion on this second objection, as we are in favour of the defendant on the first. It appears by the affidavits that Sloman, who arrested the defendant, was one of the officers usually employed by the sheriff, but that he had no warrant in the particular case in which he made the arrest. When Sloman got the defendant to his house he obtained a warrant in another case. That warrant was originally directed to Nathan, another sheriff's officer, but was not executed by him, and on giving it up to Sloman he made an indorsement to the effect that it had not been executed. Sloman then procured his own name to be inserted in it. The general rule of law, as applicable to these circumstances, is, that as soon as a party is arrested on one process he is in custody on all others then in the sheriff's hands; for, as Lord Chief Justice Tindal said in *Barratt v. Price*, it would be an idle ceremony to arrest him on all the other suits when he was already in custody; but his Lordship added, that where the defendant was illegally arrested he could not be legally detained, for he could not be considered in custody on the first writ: it was in law a false imprisonment, and therefore could not operate in favour of the sheriff. It is the same thing when the arrest is by a stranger and a wrongdoer. The detainer falls because there is no legal arrest on which to support it. But if

<sup>c</sup> 1 Adol. & Ell. 378.

<sup>d</sup> 1 Hen. Bl. 297.

<sup>e</sup> 2 Sir Wm. Bl. 1111.

<sup>f</sup> 5 Barn. & Ald. 489.

<sup>g</sup> 3 East. 89.

<sup>h</sup> 3 Dowl. Prac. Cas. 375.

<sup>i</sup> 2 Barn. & Ald. 743.

in such a case a bailiff, without collusion with the wrong-doer, arrests a man already in custody, though wrongfully so, such arrest is good for the suit in which it is made. *Hovson v. Walker*.) So that if in this case Nathan had arrested the defendant in the case in which Nathan had the warrant, without collusion with Sloman, the arrest might have been maintained. But the case here is totally different. Sloman appears as the officer in both the cases; he makes no affidavit; and we do not know at whose suit he professed to arrest the defendant, the plaintiff's name in that suit not being in any way mentioned. If we were to hold that this arrest or the detainer was good, we should be giving to any sheriff's officer authority, without any warrant, to arrest upon speculation any person against whom he fancied he might afterwards have a writ—a practice which could not be endured.

In another case of *Richards v. Yewens*, in which this defendant is also detained, the warrant was directed to another officer. An affidavit was made in this case (as it was in the last) denying collusion with Sloman. But the warrant here would not operate to justify the detainer, for the defendant was not in legal custody of the sheriff under any former arrest. The rules therefore must be absolute in both cases; but as collusion is denied in both, they must be absolute without costs.

*Collins v. Yewens* — *Richards v. Yewens*, T. T. 1839. Q. B. F. J.

## LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

### Royal Assent.

4th July.

Exchequer of Pleas Inquisitions.

### House of Lords.

To amend the jurisdiction for the Trial of Election Petitions. [For 2d reading.]

To amend the Law touching Letters Patent for Inventions. [For second reading.]

Belper, — Hatfield, — Halifax, — Huddersfield, and Bradford Small Debts Court Bills.

To prevent persons from losing their votes at an election by removal after the preceding Registration. [For 2d reading.]

To amend the Law relating to the Custody of Infants. [For 2d reading.]

To amend the Law relating to double and treble Costs. [For second reading.]

To amend the Imprisonment for Debt Act. [For second reading.]

2 Sir W. Bl. 823.

For the Enfranchisement of Lands of Copyhold and Customary Tenure.

[For second reading.]

To explain and amend the Tithes Commutation Act. [In Committee.]

To amend the 1 Vict. c. 80, for exempting certain Bills and Notes from the Usury Laws. (Second Bill.) [For second reading]

To regulate the Proceedings in the Stannary Courts.

[For second reading.]

### House of Commons.

#### ADMINISTRATION OF JUSTICE.

For the Protection of Purchasers against Bankruptcy. See p. 146, *ante*.

To improve County Courts.

[In Select Committee.] Lord John Russell.

For keeping and authenticating non-parochial Registers of Births, Deaths, and Marriages. [For 3d reading] Lord John Russell.

For regulating the Police Courts in the Metropolis. [In Committee.]

To regulate and enlarge the Summary Jurisdiction of Justices. Lord John Russell. [In Committee.]

For further improving the Police in and near the Metropolis. Mr. F. Maule. [For 2d reading.]

Small Debts Court Bills for the following places:—

Aberford,	Nottingham,
Bury, (Lancashire)	and
Eckington,	Mansfield,
Grantham,	Pontefract,
Kingsbridge and	Rotherham,
Dudbrooke,	Tavistock,
Leeds,	West Ham,
Liskeard,	Worksworth,
Liverpool,	Yorkshire.
Newton Abbot,	

To abolish Grand Juries. Mr. Pryme.

For regulating the High Court of Admiralty. [In Committee.]

To indemnify Persons omitting to qualify and to relieve Clerks to Attorneys. [In Committee.]

#### LAW OF ELECTIONS.

For the registration of Parliamentary Electors. [In Committee.] Mr. Attorney General.

Controverted Elections. Lord Mahon. [For 2d reading.]

For establishing a Court of Appeal from the Revising Barristers. [Mr. C. Buller.] [In Committee.]

#### HIGHWAYS.—SEWERS.—RATES.—TURNPIKES.

To amend the Laws relating to Highways. [In Committee.] Mr. Barneby.

To alter and amend the Laws relating to Sewers.  
In Committee.] Mr. Christopher.

For relieving Poor Persons from Rates.  
[For 2d. reading.]

To continue Turnpike Acts.  
[For 3d reading.]

*Bills passed the House of Commons.*

Bills of Exchange, No. 2.  
Borough Courts, No. 2.  
Bankrupt liability.  
Election Petition Trials.  
Stannary Courts.

*Bills Postponed.*

Copyright.  
Turnpike Unions.  
Inventions and Patterns.  
Small Debt Bills for  
Chesterfield.  
Glossop.  
Rochdale.  
Oldham.  
Warrington.  
Newark.

But leave to bring in other bills on or before  
Monday 15th July.

**IMPRISONMENT FOR DEBT ACT AMENDMENT.**

This bill, which originated in the Commons, was at first intended merely to amend the 1 Vict. c. 110, by repealing the provision which limited the sum paid for advertisements in newspapers to 3s. each, and giving a reasonable compensation for advertisements in such form as the Court might direct.

The following clauses have been added, and the bill is now before the Lords:—

The Court may appoint fit and proper persons in the several towns and counties to take recognizances of sureties for the due appearance of Insolvent Debtors. Where prisoners, except in London, Southwark, Middlesex, or Surrey, have filed their schedules, their sureties, residing more than ten miles from the Court-House in Portugal Street, may appear before a person empowered as aforesaid, and enter into recognizance for the appearance of the Insolvent, which recognizance shall be transmitted to the Court with an affidavit of the due taking. The Commissioners are authorized to make rules for regulating the amount and the taking of recognizances. The Commissioners also are empowered to take such recognizances, and the Court may order the discharge of the Insolvent when the sureties have justified by affidavit.

**COPYRIGHT BILL.**

We are sorry to find that Mr. Serjeant Talfourd has been again compelled to postpone his Bill for amending the Law of Copyright. Having carried it, however, through every opposition at the first and second readings, he intends to bring it forward in the next Session. The fate of this Bill shews what may be done by steady and constant opposition, even against a just measure; what then may not be effected in behalf of the Profession, where its rights and interests are sought to be invaded? Let the members be but united, and they need fear no encroachment that can really injure them.

**COUNTY COURTS BILL AS AMENDED.**

By this Bill, as amended, *attorneys* of the Superior Courts, and certificated *special pleaders*, as well as barristers, may be judges of the Court.

The *jurisdiction* is now proposed to be extended to debts not exceeding 20*l*.

No barrister is to act as counsel or advocate in any summary proceeding of the Court, and no person is to address the Court or jury without leave; and no person not being an attorney of the Superior Courts shall be entitled to any fees. The attorney's fees are limited to 6*s*. 8*d*. for sums recovered from 40*s*. to 5*l*.; and 10*s*. 6*d*. if above 5*l*. be recovered.

**THE EDITOR'S LETTER BOX.**

We think the articulated clerks who have written to us will not succeed in their proposed application for a rule or order to enable the examiners to take their examinations in Trinity Term next year—their periods of service under articles of clerkship, not expiring until the month of August following. They must be admitted in open Court, and therefore cannot avoid the loss of time from Trinity Term to the following Michaelmas Term.

We have received some suggestions regarding the non-payment of counsel's fees, and also the non-return of fees where counsel have omitted or neglected to attend the trial or hearing. We shall consider these communications. We believe that the complaints on both sides are few in number, and must not permit the great bulk of both branches of the profession to share in the blame attached to individual instances of mal-practice.

We have just heard that Mr. Martin, the Master in Chancery, has resigned:

# The Legal Observer.

SATURDAY, JULY 20, 1839.

— "Quod magis ad nos  
Pertinet, et aescire malum est, agitamus.

HORAT.

## LETTERS TO THE EDITOR, ON THE STATE OF THE BENCH AND THE BAR.

### LETTER II.

#### ON PRACTISING IN TWO COURTS AT ONCE.

Sir,

As you have obligingly inserted my first letter without cutting out the gentle reproof which I ventured to give to yourself, I shall now proceed with redoubled boldness to the task which I have imposed on myself; and having paid my first attentions to the Bench—not that I have quite done with them—I proceed to notice the state of the Bar. I liken myself to a lusty knight of old, riding out in search of grievances to redress, and declaring war against all ill-doers; only that instead of his well-tempered casque, I wear a patent wig on my head; in lieu of his coat of mail, a well-worn gown; in place of his steel cuisses, a pair of pepper and salt pantaloons; and lastly, holding in my hand, instead of lance or sword, a weapon far more formidable, which cuts much deeper than either—"nor keen nor solid can resist its edge"—

MY PEN. Thus armed, I proclaim myself ready to do battel against all professional abuses—to expose all grievances—to declare war against all traitors and rebels to the true cause, such cause being the honour and majesty of the Law, and to proclaim Dame Justice to be the fairest She in Christendom, blind though she be. And now, with all the zeal of that puissant and redoubted knight, the Earl of Eglintoun,—after this flourish of trumpets,—I place my lance in rest, and pray that "Heaven defend the right."

The subject of my present letter, Sir, will be the practice of taking briefs and not attending to them; which I do assure you

is a highly inconvenient one; and it is also, I am sorry to say, of frequent occurrence. Let us therefore see what it is. Tomkins has a cause to try of very little consequence to any one but himself, the female Tomkins, and the little Tomkinnes; when decided, it will settle no great principle; its circumstances involve no interesting point either of law or fact; it merely relates to the whole fortune of the said Tomkins: if he succeeds, he will, after payment of costs, get something into the bargain: if he fails, he will be ruined, the little grocery shop will be shut up, and this small branch of the great family of Tomkins will be seen and heard of no more. Feeling this, Tomkins is naturally desirous of doing his best; and, on consulting with his attorney, he is informed that the brief had better be given to Mr. Alibi, a very clever man, and in first-rate practice. Tomkins consents, and in his anxiety, ten to one, he accompanies the clerk to Mr. Alibi's chambers with the brief. They knock at the door, are received most graciously by Mr. Alibi's clerk, and, after a due inspection of the retainer-book, are informed that Mr. Alibi is not retained in the cause of *Tomkins v. Dives*. The next thing that is done I would willingly not mention, but I am obliged to do so under the circumstances: it is this—*the fee is paid*. It is not a large one, at least to Mr. Alibi, but unfortunately it is to Tomkins. It was wrong in him to go to law, it is true; this luxury should be reserved for the rich: but having received a prudent hint from his attorney, he has with some difficulty raised sufficient money to pay this fee; he therefore looks upon it as a large sum. However, he goes away light-hearted: he has secured the services of one of the most eminent counsel of the day, and as he is certain of the justice of his cause, he

returns home to the little grocery-shop, gladdens the heart of each of the little Tomkinses with a large sugar-plum, and telling his wife not to spare, for that evening, "the fine rough-flavoured bohea" at five shillings a pound, which is placarded in his window, narrates to her ears the success of the day. The evening before the trial a consultation takes place; and so fond is Tomkins of hearing all that is going on, and so anxious to know what counsel's opinion is, that he begs to be permitted to accompany his attorney. Mr. Alibi and the junior counsel confer a short time; they agree that there can be no doubt in the case, and Tomkins goes away quite delighted, and already lays out (in imagination) the money which he justly thinks he is now certain to receive: his business is to be enlarged—his eldest boy sent to school, and *his debts incurred in the course of the cause to be paid*. The important day of trial arrives. Poor Tomkins gets up at break of day, and is at the Court-house long before the doors are open. At last, however, the ushers arrive, then two or three reporters and students, then a sprinkling of junior barristers who are *not* engaged in any of the causes, and thus the Court gradually fills with witnesses, attorneys, barristers, and spectators. The Judge comes into Court, and business commences. The cause of *Tomkins v. Dives* stands third. The first cause is called on, Mr. Alibi being for the plaintiff; and Tomkins listens with delight to every word that falls from his lips: he exults that he has selected him for his champion; he wishes that his fee had been double, and thinks within himself that in a brief hour the same eloquent voice will declare him to be "a most respectable individual, who, although not moving in an exalted sphere of life, is not to be trampled on with impunity, and may appeal with just confidence to a British jury, as fathers and husbands, for ample damages." After making this peroration, Mr. Alibi, somewhat to Tomkins's astonishment, quits the Court, and leaves his junior to examine the witnesses, and the cause proceeds. Some time elapses; and as Mr. Alibi does not return, Tomkins gets a little fidgetty: his attorney (who is himself, however, a little alarmed) quiets him as well as he can, by telling him that there is another cause to be tried before him, and that no doubt Mr. Alibi will soon be back. The first cause, however, is disposed of,—which way Tomkins, in his agitation, knows not and cares not,—and the second cause is called on.

His attorney now thinks it is high time to see where Mr. Alibi is, and, accompanied by poor Tomkins, who is quite in a fever from not being used to it, hurries to an adjoining Court. They enter, and to their dismay hear Mr. Alibi in the middle of his speech, appealing to another British jury, as husbands and fathers, to do justice to other individuals as injured as the former. In vain the attorney and Tomkins cast imploring looks on him; he sees only the British jury, and they hasten back to see how the second cause gets on. But, alas! in their absence the second cause has unexpectedly been disposed of. A compromise has been come to. The defendant apologises, the plaintiff is satisfied, and there is an end of cause 2. But now, Sir, mark the sequel. Cause 3 is called on. *Tomkins v. Dives*. "Who appears in *Tomkins v. Dives*?"

*Counsel for Defendant*.—I appear, my Lord, for the defendant.

*Junior Counsel*.—My Lord, Mr. Alibi leads me in this cause, and he is speaking at this moment in the Court of ———.

*Judge*.—Well, what is that to me? You must go on without him.

*Junior Counsel*.—Really, my Lord, I am quite unaccustomed to lead, and unprepared to do so in the present instance.

*Judge*.—Then, Sir, I shall strike the cause out. How can business be got on with if counsel don't attend, especially when the arrear is so great?

Under these circumstances, with the penalty of being put at the end of the list, the junior goes on, hoping that Mr. Alibi may return in some stage of the cause, and rescue his poor client. Now the junior, although an able man in his way, may not happen to be one of those extraordinary beings that we read of in novels, who, the more unaccustomed they are to lead a cause, the better they do it. The leader on the other side seizes a weak point, goes to the Judge for a nonsuit, presses his less experienced opponent hard with some supposed defect in the proof, and the result is that poor Tomkins is nonsuited. All the time the cause has been on he has known nothing of what has been going on, and to his dismay he now hears that the plaintiff must be called, and the Court three times resounds with his name—

"Tomkins!" the woods,

"Tomkins!" the floods,

"Tomkins!" the rocks and hollow mountains rung.

The painful result is that our poor grocer is told that he may apply for a new trial,

and that he is certain of obtaining it. But he looks at Dives's long purse; he thinks it throwing good money after bad, and he consents to be ruined immediately. Now, Sir, this is not exaggeration—I say in many instances *this very case occurs*.

And is this state of things to be endured? Who is to blame here? Not the Judge,—who is bound to take the course he did for the sake of the other suitors. Not the junior counsel,—who did his best, never having undertaken to lead. Not the leader for the defendant,—who was bound to do *his* best for *his* client. Not the attorney,—who secured a first-rate leader. Who was then to blame? *Mr. Alibi, wholly and solely, for taking a cause to which he was NOT CERTAIN of being able to attend.* The remedy for this grievance I will, with your permission, advert to in another letter. In the mean time, as 'the groans of a single soldier are said to affect the great captains of the age more than the sight of thousands of the slain,' I trust that the fate of poor Tomkins may make some impression, although the mass may be disregarded.

I am, Sir,

Your very obedient servant,

T———.

July 17, 1839.

## PRACTICAL POINTS OF GENERAL INTEREST.

### AGREEMENT FOR SERVICE.

An agreement must be binding on both parties to be valid. If it be merely binding on one party this will not be sufficient, and the consideration must be expressed in the agreement. The leading case on this point is that of *Wain v. Warlters*, 5 East. 10, in which one promised in writing to pay the debt of a third person, without stating on what consideration: It was holden, that parol evidence of the consideration was inadmissible by the statute of frauds; and consequently, such promise appearing to be without consideration upon the face of the written engagement, it was *nudum pactum*, and gave no cause of action. See also *Saunders v. Wakefield*, 4 B. & A. 695; and *Jenkins v. Reynolds*, 3 B. & B. 14. So when a person agreed to remain with another for two years, "for the purpose of learning the business of a dress-maker," it was held that this agreement was void, as no consideration was expressed in the agreement, but the defendant's undertaking; and since the case of *Wain v. Warlters*, that was

indispensable. This rule has very recently been followed by the Court of Queen's Bench.

*B.*, by a memorandum of agreement, signed by himself only, agreed to work for the plaintiff, "manufacturer of powder flasks, and for no other person whatsoever, from the 17th August 1833, during and until the expiration of twelve months, and so on from twelve months' end to twelve months' end, and until I shall give *J. S.* (plaintiff) twelve months' notice in writing to quit." Held, that as this agreement contained nothing binding on the plaintiff, it was *nudum pactum*, and therefore, although *B.* served under the agreement until April 1836, when he left the service and worked for the defendant, who was shewn the agreement in question, and warned that *B.* was the plaintiff's hired servant, that in an action against defendant for harbouring the plaintiff's servant, it was competent to the defendant to shew that the contract of hiring was altogether void. Lord Denman, C. J., said—"The issue at the trial in this case was, whether *William Bradley* was the servant of the plaintiff. In order to prove that fact, the agreement of the 17th of August 1833, was put in; but that appeared to be upon one side only, although it undoubtedly constituted a yearly contract of hiring, if valid, and it stipulated for twelve months' notice in writing to quit the plaintiff's service. *Bradley*, in 1836, gave a month's notice in writing, and being informed by the plaintiff that a year's notice was necessary, he gave a parol notice to that effect. On these facts we are to say whether any valid contract of service existed between the parties. We think there did not; for the engagement is all on one side, and no reciprocal benefit was secured to *Bradley*. The answer made at the bar was, that a consideration moving from the plaintiff would result at law from the work and labour done by *Bradley*, as the plaintiff would be under the obligation of paying for such service; but so he would for any services whatever. Therefore that argument fails.—*Sykes v. Dixon*, 1 P. & D. 463.

## NOTES ON EQUITY.

### EQUITABLE MORTGAGE.

WHERE a lease is deposited by way of equitable mortgage, it is of considerable importance to have it settled whether the depositary is liable for the rents and covenants. In the case of *Lucas v. Comerford*, 3 Bro. C. C. 166; 1 Ves. Jun. 235, the defendant,



having taken a deposit of a lease as a collateral security, was decreed to take an assignment; but some doubt existed as to the accuracy of the reports of that case as not giving all the circumstances. A copy of this case was therefore procured from the Reg. Lib. which is given by Mr. Simons, 8 Sim. p. 499, by which it appears that Comerford the depositary had obtained an assignment of the lease, and was in the actual possession and enjoyment of the premises; and in his answer he admitted that he was bound by the covenants in the lease, inasmuch as he was ready to perform them. In the case of *Flight v. Bentley*, 7 Sim. 149; 10 Leg. Obs. 384, Sir L. Shadwell, V. C., held, on the authority of *Lucas v. Comerford*, but without any great argument, that the depositary of a lease for securing a debt, not having taken possession nor received any benefit from the lease, was liable to the payment of the rent and the performance of the covenants. This decision excited "great alarm in the public mind, more especially among persons in trade, who are in the habit of taking deposits of leases to secure debts due to them; and moreover, it was not satisfactory to the profession, and therefore the case of *Moore v. Choat* was brought before the Court, although it was precisely similar in all its material circumstances to *Flight v. Bentley*." See 8 Sim. 499. This case of *Moore v. Choat* was first reported fully and accurately by our own reporter, 17 L. O. 378, and has since been given by Mr. Simons, Vol. 8, p. 508; and Sir L. Shadwell, V. C., admitting that the case was in fact a re-hearing of *Flight v. Bentley*, felt bound to say that that decision could not be supported. That case is consequently overruled, and it is now to be understood that a deposit by way of lease does not necessarily render the depositary liable for the rents and covenants. It is to be observed, that in *Jenkins v. Portman*, Lord Langdale, M. R., held that the equitable assignee of an underlease is clothed with the obligation to perform the covenants in the underlease, though he is himself the original lessor, and cannot set up the non-performance of those covenants against his lessee as a ground for refusing the performance of a covenant in the original lease. *Jenkins v. Portman*, 1 Keen, 435.

#### REQUESTS TO JEWS.

A bequest for the maintenance of an assembly for reading the Jewish law and advancing the Jewish religion, was declared by Lord Hardwicke to be illegal. *De Costa*

*v. Paz*, 2 Swanst. 487. As to this case, Lord Eldon, C. said, "The decision in *De Costa v. Paz*, has established that no one can found by charitable donation an institution for the purpose of teaching the Jewish religion; but it is quite a different question whether property can be given to perform charitable acts to persons who happen to be Jews." In *re Bedford Charity*, 2 Swanst. 522. And where a testator bequeathed "the interest and dividends of the remaining third of the above residue to be given to the rulers and wardens of the great synagogue in this city of London, every year on the eve of the Passover, distributed at least among ten worthy men who have wives and children, among whom there ought to be some learned men, to purchase meat and wine fit for the service of the two nights of the Passover;" Sir L. Shadwell, V. C., held, that the bequest being intended to enable persons professing the Jewish religion to observe its rites, was good. *Straus v. Goldsmid*, 8 Sim. 614.

#### THE NEW MASTER.

Sir William Horne has been appointed to the Mastership in Chancery, vacant by the resignation of Mr. Martin, which we mentioned last week. This, we think, is the first instance of a gentleman who has held the offices of Solicitor General and Attorney General, accepting the office of Master in Chancery. As, however, this situation is an excellent training school for any other judicial situation, it may be perhaps taken as a step to some other, although we have not the slightest authority for saying so. For ourselves, we consider the Masterships in Chancery perhaps the most desirable prizes in the profession. Although the salary is not so high as that of many other Judges, the labour is comparatively light: there is just work enough to occupy agreeably the mind of one who has borne the toil and burden of professional life. There is, indeed, little of outward pomp or show about the office, but there is a recognized station in society, and many agreeable as well as venerable associations connected with its name. There is, however, some room for reform here, and we must not let our respect and regard for the holders of these offices interfere with our determination to inquire whether they discharge their duties.

While on this subject, therefore, we may mention that an abstract was ordered by the House of Commons on Monday last, of the

returns made in last Michaelmas Term, in pursuance of the 17th section of the statute 3 & 4 W. 4, c. 94, shewing the number of days on which each of the Masters of the High Court of Chancery attended at his office during the twelve months preceding such returns, and the average number of hours occupied in one day's attendance, and also showing the number of causes, petitions, and matters of every description pending in each of the offices of the Masters at the time of making such returns; and showing how many of such causes, petitions, and matters have been pending upon the same reference for more than four years, how many for more than three years, how many for more than two years, and how many for more than one year, so far as appear by such returns. We shall await this abstract with much expectation, and we shall then turn our serious attention to the subject with the hope of remedying any real neglect or abuse.

## PARLIAMENTARY NOTICES.

### THE COUNTY COURT SCHEME.

We have already printed a full abstract of the bill "for Improving County Courts," 17 L. O. 422 to 452, 469. That bill was referred to a Select Committee, and it has since been returned to the House as amended by the Committee, and their report on the bill has been printed. The first point discussed in the committee was the difficult one of the patronage of the Judges; and it was carried that it should be left with the Lord Chancellor, by a majority of 8 to 6. The next question put was, "that on the understanding, that should any deficiency arise in the fee fund, it is to be supplied from the consolidated fund; and with a view to uniformity of system, in all clauses in which any control or jurisdiction is proposed to be vested in county magistrates, such control or jurisdiction shall be transferred to the executive government;" this was carried by 10 to 1. There was some discussion as to the time for which a person should be imprisoned on execution (clause 54, 17 L. O. 454). It stood in the bill, that they might be committed to the custody of the sheriff of the county for twenty days; unless the order of the court was for more than 20s., and not exceeding forty days, unless the order of the court was for payment of more than 40s. These periods it was proposed to lessen, and the clause now stands 69 in the bill, and authorizes a commitment to prison for any time not exceeding seven

days, unless the order of the court is for payment of more than 5l. It was next proposed by Sir James Graham, that all lords of manors now holding courts for the recovery of debts, should have the powers of their courts extended to the amount prescribed by the bill, provided they declared their option within three months of the passing of the bill to the Chancellor. That the Judges so appointed might be removable by the Lord Chancellor in a summary way, but the right of appointment to revert to the lords; and that the Crown should have the power of extending the jurisdiction. But these resolutions were negatived by a majority of 7 to 4, as was a clause for exempting the courts held within the city of London or the borough of Southwark from the operation of the bill. These were the only matters discussed in the committee, according to their report, and the only alterations proposed. We presume that it is intended to proceed with the bill in the present session, as a vote has been taken to supply the deficiency in the fee fund out of the Consolidated Fund.

### THE NEW EQUITY JUDGE.

Mr. Freshfield brought the subject of the Court of Exchequer before the House of Commons on Tuesday last; and although he was prevented giving the whole of his address, yet we think he said enough to draw public attention to the subject. He is of opinion that the Equity jurisdiction should be continued in the Court of Exchequer, on the ground that a complete machinery exists for the disposal of business, and that all that is necessary is to improve the Court by appointing a permanent Equity Judge, who shall devote himself to the Equity business. There is still some expectation that the Lord Chancellor may bring in a bill this session for the appointment of a new Judge in the Court of Chancery, or as it is said by some, of two new Judges. Looking to the interest of the suitor, we should certainly rejoice at some additional judicial strength, but we almost despair of it in the present session.

## NEW BILLS IN PARLIAMENT.

### TRIALS BEFORE QUARTER SESSIONS.

This is a bill for declaring what prisoners shall be tried at Courts of Oyer and Terminer and Gaol Delivery. It proposes to restrain the Justices in Quarter Sessions from trying certain offences, viz.:

1. That the justices of the peace acting in and for any county, and the recorders of cities,

towns, and boroughs, shall not at any session of the peace, or at any adjournment thereof, try any person or persons charged with any treason, murder, or capital felony, or with any felony which, although committed by a person not previously convicted of felony, is punishable with transportation beyond the seas for life, or with any of the following offences; (that is to say.)

1. Misprision of treason.
2. Offences against the Queen's title, prerogative, person, or government, or against either House of Parliament.
3. Offences subject to the penalties of præmunire.
4. Blasphemy and offences against religion.
5. Administering or taking unlawful oaths.
6. Perjury and subornation of perjury.
7. Making a false oath or affirmation, so as to be liable to the punishment of perjury.
8. Forgery.
9. Unlawfully and maliciously setting fire to crops of corn, grain, or pulse, or to any part of a wood, coppice, or plantation of trees, or to any heath, gorze, furze, or fern.
10. Bigamy and offences against the laws relating to marriage.
11. Abduction of women and girls.
12. Endeavouring to conceal the birth of a child.
13. Offences against any provision of the laws relating to bankrupts and insolvents.
14. Composing, printing, or publishing blasphemous or seditious libels.
15. Bribery.
16. Unlawful combinations and conspiracies, except conspiracies or combinations to commit any offence which such justices or recorder respectively have or has jurisdiction to try, when committed by one person.

Provided always, that nothing herein contained shall be construed to alter or affect the authority of the justices of the peace acting in and for the cities of *London* and *Westminster*, the liberty of the Tower of *London*, the borough of *Southwark*, and the counties of *Middlesex*, *Essex*, *Kent*, and *Surrey*, with respect to offences committed or alleged to be committed within the jurisdiction of the Central Criminal Court.

2. Recognizances to be obligatory to appear at assizes.
3. Sheriff to issue precept for bringing prisoners to assizes from ten miles round.
4. In default of prosecution prisoners may be remanded or discharged.
5. No prisoners to be brought from any other house of correction.
6. Clerk of the peace to issue precept for bringing prisoners for trial at quarter sessions.
7. Prisoners to be in custody of keeper of house of correction, except while in Court.
8. Prisoner at sessions to be bailed if no indictment be preferred.
9. Not to affect Habeas Corpus Act.
10. Act may be amended or repealed.

## LORD BROUGHAM'S CHARACTERISTIC SKETCHES OF LAWYERS.

### THE LATE MASTER STEPHEN.

"Mr. Stephen was a person of great natural talents, which, if accidental circumstances had permitted him fully to cultivate, and early enough to bring into play upon the best scene of political exertion, the House of Commons, would have placed him high in the first rank of English orators. For he had in an eminent degree that strenuous firmness of purpose, and glowing ardour of soul, which lies at the root of all eloquence; he was gifted with great industry, a retentive memory, and ingenuity which was rather apt to err by excess than by defect. His imagination was, besides, lively and powerful; little certainly under the chastening discipline of severe taste, but often enabling him to embody his own feelings and recollections with great distinctness of outline and strength of colouring. He enjoyed, moreover, great natural strength of constitution, and had as much courage as falls to the lot of most men. But having passed the most active part of his life in one of the West Indian colonies, where he followed the profession of a barrister, and having after his return addicted himself to the practice of a Court which affords no scope at all for oratorical display, it happened to him, as it has to many other men of natural genius for rhetorical pursuits, that he neither gained the correct taste which the habit of frequenting refined society, and above all, addressing a refined auditory, can alone bestow, nor acquired the power of condensation which is sure to be lost altogether by those who address hearers compelled to listen, like judges and juries, instead of having to retain them by closeness of reasoning, or felicity of illustration. It thus came to pass, that when he entered parliament, although he could by no means be said to have failed, but on the contrary at first, and when kept under some restraint, he must be confessed to have had considerable success, yet he was, generally speaking, a third-rate debater, because of his want of the tact, the nice sense of what captivates such an audience, how far to press a subject, how much fancy to display,—all so necessary for an acceptable speaker and powerful debater, one who is listened to by the hearers as a pleasure, not as a duty—for the hearers' own gratification, and not for the importance of the subject handled—one in short who must address and win the tribute of attention from a volunteer audience like the House of Commons, and not merely receive the fixed dote of a hearing from the compulsory attention of the Bench. There was another circumstance connected with Mr. Stephen's nature, which exceedingly lessened his influence, and indeed incalculably lowered his merit as a speaker. He was of a vehement and even violent temper; a temper too, not like that of merely irascible men, prone to

sudden fits of anger or excitement, but connected also with a peculiarly sanguine disposition; and as he thus saw objects of the size and in the colours presented by this medium, so he never could imagine that they wore a different aspect to other eyes, and exerted comparatively little interest in other bosoms. Hence he was apt to proceed with more and more animation, with increasing fervour, while his hearers had become calm and cold. Nor could any thing tend more to alienate an audience like the Commons, or indeed to lessen the real value of his speeches. It must have struck all who heard him when, early in 1808, he entered parliament under the auspices of Mr. Perceval, that whatever defects he had, arose entirely from accidental circumstances, and not at all from intrinsic imperfections; nor could any one doubt that his late entrance upon parliamentary life, and his vehemence of temperament, alone kept him from the front rank of debaters, if not of eloquence itself.

"With Mr. Percival, his friendship had been long and intimate. To this the similarity of their religious character mainly contributed; for Mr. Stephen was a distinguished member of the Evangelical party to which the minister manifestly leant without belonging to it; and he was one whose pious sentiments and devotional habits occupied a very marked place in his whole scheme of life. No man has however a right to question be it ever so slightly, his perfect sincerity. To this his blameless life bore the most irrefragable testimony. A warm and steady friend—a man of the strictest integrity and nicest sense of both honour and justice—in all the relations of private society wholly without a stain—though envy might well find whereon to perch, malice itself in the exasperating discords of religious and civil controversy never could desecrate a spot on which to fasten. Let us add the bright praise, and which sets at naught all lesser defects of mere taste, had he lived to read these latter lines, he would infinitely rather have had this sketch stained with all the darker shades of its critical matter, than been exalted, without these latter lines, to the level of Demosthenes or of Chatham, praised as the first of orators, or followed as the most brilliant of statesmen.

"His opinions upon political questions were clear and decided, taken up with the boldness—felt with the ardour—asserted with the determination—which marked his zealous and uncompromising spirit. Of all subjects, that of the slave trade and slavery most engrossed his mind. His experience in the West Indies, his religious feelings, and his near connexion with Mr. Wilberforce, whose sister he married, all contributed to give this great question a peculiarly sacred aspect in his eyes: nor could he either avoid mixing it up with almost all other discussions, or prevent his views of its various relations from influencing his sentiments on other matters of political discussion."

"On the 11th of May, 1812, a most lamentable catastrophe deprived the world of the minister who was the chief stay of Mr. Stephen's system. Mr. Perceval was walking arm in arm with that gentleman from Downing Street to the House, when he was met by a messenger whom the Secretary of the Treasury had dispatched to hasten him, the opposition having refused to suspend the examination longer, as the hour appointed to begin had some time passed. Mr. Perceval, with his wonted activity, darted forward to obey the summons, and was shot as he entered the lobby of the House. It was remarked that had Mr. Stephen, who walked on his left, been still with him, he would have been most exposed to the blow of the assassin. At that moment the inquiry had been recommenced, and Mr. Brougham was examining a witness, when he thought he heard a noise as if a pistol had gone off in some one's pocket—such at least was the idea which instantaneously passed through his mind, but did not interrupt his interrogation. Presently there were seen several persons in the gallery running towards the doors; and before a minute more had passed, General Gascoigne rushed up the House, and announced that the minister had been shot, and had fallen on the spot dead. The House instantly adjourned. Examinations were taken of the wretch who had struck the blow, and he was speedily committed for trial by Mr. M. A. Taylor, who acted as a magistrate for Middlesex, where the murder was committed. On that day week, Bellingham, having been tried and convicted, was executed, to the eternal disgrace of the Court which tried him, and refused an application for delay, grounded on a representation that were time given, evidence of his insanity could be obtained from Liverpool, where he had resided and was known. It cannot with any truth be said that the popular ferment, which so astonishing and shocking an event occasioned, had at all subsided on the trial, the fourth day after the act was committed, and the day on which the judge and jury were called upon—calm in mind—inaccessible to all feelings—above all outward impressions—to administer strict and impartial justice."

"Mr. Stephen never was accused, at any time, of unworthily sacrificing his principles for any consideration; and three years afterwards he gave a memorable proof of his public virtue by at once abandoning the ministry, and resigning his seat in parliament, because they pursued a course which he disapproved, upon the great subject of colonial slavery. He retired into private life, abandoned all the political questions in which he took so warm an interest, gave up the public business in which he still had strength sufficient to bear a very active part, and relinquished without a struggle or a sigh all the advantages of promotion both for himself and his family, although agreeing with the government in every other part of their policy, because on that which he believed conscientiously to be the most important of all their practical views, they differed from his

own. It would indeed be well if we had now and then instances of so rare a virtue; and they who looked down upon this eminent and excellent person as not having answered the expectations formed of his parliamentary career, or sneered at his enthusiastic zeal for opinions in his mind of paramount importance, would have done well to respect at a distance merit which they would not hope to imitate—perhaps could not well comprehend—merit, beside which the lustre of the statesman's triumphs and the orator's fame grows pale."<sup>a</sup>

## ON THE MODE OF EXAMINING ARTICLED CLERKS.

### LEGAL DISTINCTIONS.

Sir,

THE liberality you have shewn in allowing your work to be a channel through which the grievances of our profession may be published, leads me to trouble you with this letter. I am quite aware that you gain no direct profit from its insertion; but, unless gratitude be utterly banished, your kindness will obtain its reward.

Some three years ago, I corresponded with you on the subject of granting honors at the legal examinations. I was then a candidate, as I hoped, for honors; but my wishes were disappointed, and I was obliged to be content with passing in the *ordinary* manner. From that period to the present there has been a continued endeavour to amend our profession in its practice, and it does appear to me that the time has arrived when an additional improvement may be made in the method of preparing its members for their duties.

All will agree, that to a lawyer, good character and ability are most necessary, and that by all practical means these should be secured in their *highest* degrees. The examination which has been instituted, certainly complies with the first part of the requisition, but it leaves wholly untouched the last. It insures a *given amount* of respectability and diligence, but holds out no inducement whatever to a single step beyond. But why is this? Are solicitors made of other mould than men in general? or is it of small importance that they should be thoroughly fitted for their calling? Are their avocations so far inferior to those of the divine, the student of medicine, the soldier, or the sailor, that while prizes are given here, none should be held out there? I think you will agree that it is not so, and that considering the necessary multiplication of laws, and the increased facilities for improper conduct, the law, perhaps above all other pursuits, requires a stimulus to industry and a warning against fraud; and that it is incumbent on the heads of the profession to endeavour for the future to rescue their younger brethren from what has, in time past, fallen into a proverb, with less temptation than exists at present.

<sup>a</sup> From "The Speeches of Lord Brougham." Vol. 1. A. & C. Black: 1838.

I should think few can doubt the beneficial effect of allowing and publishing degrees of merit. All must grant that emulation is a most powerful motive, and that the great majority of mankind possess the feeling. For my own part, and for others whose sentiments I know, I am sure that our efforts would have been doubled, had there been classes. The reason applies equally to the talented and the stupid. The former having much, is anxious to have more; the latter being commonly considered wanting, is desirous to prove, that at least, he can claim something. At the bar this feeling has been gratified, and there we find promotions according to supposed deserts; but the solicitor, because the vulgar say he has no honor, is precluded from trying to obtain it, and with the widest field for exercise and display, and the usual ideas of a gentleman, has no temptation to exert his abilities, and nothing to distinguish him from the lowest of his tribe. This is certainly *unfair*.

I believe it has been objected, that allowing distinctions would be a hard measure on those who gained *none*; but I am sure you will see that this does not deserve an answer. Admit it to be true, and it applies to all rewards whatever, and dashes the honours of a Wellington with the murmurings of the fool and the coward;—it impugns the system by which the moral world is governed, and gives force to the complaint of vice, because a privilege is allotted to virtue. To the fool or knave alone is it a convenient argument, and they would fain reduce by the bed of Procrustes, all who exceeded them in mental or moral stature. But this cannot be; and the sole question is, whether, when all other professions are suffered to share in this natural advantage, the *lower branch of the law* should alone be excluded? In which, because it is the lower branch, a twofold stimulant is necessary.

For my own part, my chance is past, for I am now in practice; but are my sons to be denied the benefit? I may give them (as is now in the general march of intellect essential) a good education; I may carefully bring them up to our mutual profession; I may hear other parents exulting in the recorded honours of their sons, and may see the advantages which recorded honours bring; but because my son has adopted the law and become a solicitor, I am to be deprived of all returns of this nature, and he of the chance of making them.

But no one disputes the benefit of a change of this nature. The obstacle lies in that aversion to do *anything new*, which apparently pervades human nature,—a sort of internal *vis inertiae*, which it requires a given momentum to overcome. Once let it be adopted, and all will concur in its utility; but to ensure its adoption strenuous efforts must be made: efforts, the object of which should be rather to direct attention to the measure, than convince any fancied opponents, and in truth none are to be found.

I do not wish to cause one farthing of expense: the result may be effected by the means in hand. Emulation is gratified by success

merely, without reference to the value of the prize, and in this case, therefore, the end may cheaply attained. Let the system of classes be adopted as in an university examination: or let a given amount of the candidates be numbered according to merit, as in the *poll* at Cambridge. It might be well to pursue the latter plan, and apply it thus,—Let ten be numbered in each of the *heads* into which the subject is divided; and then let ten be numbered as the general balance; and let this last be considered as the great honor, so as to encourage a general proficiency.

I allow that it will add slightly to the trouble of the Examiners; but from the acquaintance I have personally with some of that body, I feel assured that they would utterly reject any ideas of self convenience, when compared with the general character and credit of their profession. To you, Sir, I also appeal, and do ask you seriously to consider the matter; and in the event of your opinion being favourable, I beg your support for the sake of the present and the future generation. If there were weighty objections to the principle, or intricate difficulties in the detail, the question would assume another aspect; as it is, there is no opposition, and no new organization required—our sole enemy is that natural sluggishness which appears almost instinctive in certain classes, and which can only be overcome by activity and repeated exertion.

Of one thing I am certain, that with the growing desire to improve our profession which at present animates so many of its members, ultimate success may be safely predicted of some plan analogous to the one proposed; but what need for delay, and why debar the rising generation of the benefit which will be certainly enjoyed by their successors?

I do trust to see the subject taken up by some influential person whose name may give substance to his suggestions, and as a humble labourer shall heartily rejoice in the victory, by whomsoever it may be achieved.

A COUNTRY SOLICITOR.

## OPPOSITION TO THE COUNTY COURTS BILL BY THE CITY OF LONDON.

In the Common Council on the 11th instant, Mr. *Obbard* brought up a report from the Secondaries Committee, recommending that a petition against this bill should be presented to the House of Commons; and that the following be the petition, and moved that the same be adopted:—

“To the Honourable the Commons of the United Kingdom in Parliament assembled.

The humble petition of the Lord Mayor, Aldermen, and Commons of the City of London, in Common Council assembled,

“Sheweth,

“That your petitioners have observed with

considerable anxiety a bill now before your honourable House “for improving County Courts.”

“That the courts of law held within the city of London and the liberties thereof, have from the earliest period been regulated by the citizens of London, or their representatives, who have also appointed the Judges, Commissioners, and other officers belonging to the same.

“That by the said bill it is proposed to deprive your petitioners of all control over the Courts for the Recovery of Small Debts both within the city of London and the borough of Southwark, and of the Judges, Commissioners, and officers belonging to the same, in violation of their rights and privileges, and without any just or reasonable cause.

“That the powers of your petitioners within the borough of Southwark will be injured by the provisions of the said bill.

“That under the provisions of an act passed in the fourth year of the reign of King George the Fourth, intituled, “an Act to enlarge the powers of and render more effectual certain acts of the 22d and 32d years of the reign of his Majesty King George the Second, and the 46th year of the reign of his late Majesty King George the Third, for the more easy and speedy recovery of small debts within the town and borough of Southwark, and the several parishes and places in the said acts mentioned, and to regulate the fees payable to the court thereby established,” a sum of 500*l.* per annum is now payable to the High Bailiff of the borough of Southwark, which it is proposed by the said bill to repeal.

“That the said bill also contains, in the opinion of your petitioners, various clauses deeply affecting and highly injurious to the interests of the public, and particularly those clauses which require that all suits brought in County Courts shall be tried at the Court holden for the district wherein the defendant shall dwell or carry on his business.

“That should such clauses pass into a law, your petitioners are of opinion that great inconvenience and expense will be entailed, not only upon the inhabitants of this city, but also upon the public at large, by requiring creditors in all parts of the country to follow their debtors into distant parts of the Kingdom with their witnesses to prosecute their claims, and procure the payment of their debts.

“That your petitioners cannot see any principle upon which such a distinction should be made in favour of debtors, who, at their own option select the place where they contract their debts.

“That in the opinion of your petitioners such clauses will also materially tend to defeat the ends of justice, by deterring creditors from proceeding against their debtors, in consequence of the increased expenditure to which they must necessarily be liable under the operation of such a law, and thus defeat the object of the said bill as stated in the pre-

amble, namely, the summary recovery of small debts.

"Your petitioners therefore humbly pray this Honourable House, that the said bill may not pass into a law."

Mr. Lott, in seconding the motion, stated that this was one of an objectionable class of bills, and amongst other grounds of opposition, urged that the trading and mercantile interests of the city of London, and of all other parts of the kingdom, were wholly lost sight of in their concoction: that after the passing of this bill, any debtor, by putting in a false plea to an action brought against him by his creditor, might drag him some hundreds of miles to try this feigned issue, and finally escape through the Insolvent or Bankrupt Court, "*a sponge which wipes out all, and costs him nothing.*" The bill contained other provisions in contravention of the trial by jury, and the whole tenor of it was entirely indefensible.

The motion was carried unanimously, and the petition was presented by the sheriffs at the bar of the House of Commons on the following evening.

#### AFFIDAVIT OF SERVICE OF WRIT OF SUMMONS.

*To the Editor of the Legal Observer.*

Sir,

As there have been several judgments set aside on account of irregularity in the service of the Writ of Summons, and no good form given in the books of practice (especially for two defendants), perhaps you will insert the following form, settled by an eminent special pleader pursuant to the late rules.

A SOLICITOR AND SUBSCRIBER.

In the

BETWEEN *A. B.* . . . . Plaintiff,  
and  
*C. D. and E. F.*, Defendants.

of  
in the  
maketh oath and saith, that he *this deponent* did, on the . . . day of  
*instant [or last]*,<sup>a</sup> at . . . , in the county of . . . , personally serve *A. B.* [*one of the above named defendants*] with a writ of summons, at the suit of the above named plaintiffs against the above named defendants, dated the . . . day of  
*instant [or last]*, and that he *this deponent* did, on the . . . day of . . . *instant [or last]*, at . . . aforesaid, personally serve *C. D.* [*the other of the said defendants with the said writ*] by delivering unto and leaving with each of them the said *C. D. and E. F.* [*or the said C. D.*] a true copy of the said writ of summons, and at the

<sup>a</sup> I submit that it ought to appear that the writ was served within the jurisdiction of the Court.

same time [*or at the time of such services respectively*] shewing unto him [*or each of them*] the said defendants the said original writ of summons: And this deponent further saith, that the following matters appeared to this deponent; first, that the said writ of summons was regularly issued out of and under the seal of this Honourable Court; second, that a memorandum was subscribed to the said writ and copy; and third, that due indorsements were made on the said writ and copy [*or writ and copies respectively*] pursuant to the statute and the rules of Court in that case made and provided: And this deponent further saith, that he did on the . . . day of . . . *instant [or last]*, being within three days at least after such service [*or services*] of the said writ, indorse on such writ the day or *respective days* of the week and month of such service [*or services*]*—being the day [or several days]—and in the year [first]* aforesaid, according to the statute in that case made and provided.

Sworn at . . . , in the  
county of . . . , the  
day of . . . , in  
the year one thousand  
eight hundred and  
thirty-nine,  
Before me,

A Commissioner for taking Affidavits  
in the said Court.

#### SUPERIOR COURTS.

*Vice Chancellor's Court.*

##### LUNATIC'S REAL ESTATE AND DEBTS.

*The real estate of a lunatic is not liable under the act 3 & 4 W. 4, c. 104, or otherwise, to the payment of debts contracted on his behalf, during his lunacy, or to the payment of the expenses of his funeral.*

Thomas Beard died in May, 1800, leaving Ann Beard, his widow, three sons, Thomas, Enoch, and Benjamin Beard, and five daughters; having by his will given to trustees all his real and personal estate in trust to suffer his wife to enjoy a certain part thereof during her life, if she should remain unmarried. The testator cut off his eldest son Thomas with one shilling, and gave his freehold estates to the other two, Enoch and Benjamin, to be divided equally between them, giving the residue of his property equally among his five daughters, and appointing his wife, Ann Beard, executrix. She proved the will, entered into possession of the real and personal estate, and in 1803 she married Thomas Carter, who then entered into possession of the real estates, and into the receipt of the rents and profits, on the ground that his wife was entitled to dower out of them, though her interest under the will ceased on her marriage. Enoch Beard became a lunatic at the age of twenty-two, and continued

in that state up to his death in 1835. In 1838, Thomas Beard claimed a moiety of the said estates as heir-at-law of Enoch, and he brought an ejectment against Carter, and recovered the same. Thomas also became the personal representative of the said Enoch, and he commenced an action against Carter for the mesne profits of the estates recovered by him in the ejectment: whereupon Carter filed this bill, alleging among other things, that the various payments made by him for the support and comfort of Enoch during his lunacy, were a charge on his estate, and praying an order to restrain the said action, &c. The bill also prayed for an account of Enoch's personal estate come to the hands of Thomas Beard, and for a declaration that his real estates were liable as assets for the payment of his debts. An injunction to stay the action was afterwards granted, after which the defendant put in his answer and obtained an order *nisi* to dissolve the injunction.

Mr. Jacob and Mr. Romilly now shewed cause for continuing the injunction. They relied on the act 3 & 4 W. 4, c. 104, "An act to render freehold and copyhold estates assets for the payment of simple contract debts." The plaintiff laid out in support of the lunatic for many years a much larger sum than his estate, real and personal, produced. He maintained him during his life, and paid the expences of his funeral, and he was entitled to be reimbursed out of his real estate, which, by virtue of the said act, becomes assets for the payment of those debts.

The Vice Chancellor, without hearing the counsel for the defendant, said:—The case of debt is divided into two heads; first, the sum said to be expended in the support of the lunatic, over and above the income of his estate; and then the expences of the funeral. I am clearly of opinion that the funeral expences are not within the statute 3 & 4 Will. 4, c. 104; for that provides for the payment of the debts of the intestate, which must necessarily mean debts contracted by him, and certainly funeral expences cannot be called debts contracted by the deceased. Nor do I think that the claim made by the plaintiff for disbursements, which he, as a step-father, made for the benefit of the lunatic, can be brought within the meaning of the statute; for the obvious intention of the enactment was to render estates liable to the debts which the intestate himself had contracted, and a debt cannot be contracted by a person incapable of entering into a contract. I am therefore of opinion that the order *nisi* for dissolving the injunction must be made absolute. *Carter v. Beard*, at Westminster, T. T. 1839.

### Rolls.

#### PRACTICE.—INFANT.—GUARDIAN, MARRIAGE OF.

*When a single woman, who has been appointed guardian of an infant, marries, the proper course is to direct a reference to the Master,*

*on petition of the infant's next friend, to name a new guardian, with liberty to the former guardian to propose herself.*

One Robert Holt, by his will dated in 1828, gave all his real and personal estate to John Holt and another, upon trust, among other things, to pay the sum of 70*l.* to Elizabeth Gornall, and to pay her an annuity of 30*l.* during her life, to her separate use; and also to pay Robert Holt Gornall, the infant son of the testator by the said Elizabeth Gornall, an annuity of 70*l.* during his life. In July 1830, soon after the testator's death, Elizabeth Gornall was appointed by order of court, guardian of the said infant, and an allowance of 40*l.* a-year was made to her for his maintenance and education. She married in 1832, a man in an humble station, but of good character, and had children by him. A petition was presented in the infant's name by the said John Holt the trustee, as his next friend, praying a reference to the Master, for the appointment of a guardian to the infant in place of his mother, and in consequence of her marriage.

Mr. Booth in support of the petition, said it was a matter of course to appoint a new guardian in place of the mother upon her marriage; and in this case, the mother having children by the after-taken husband, and being in poor circumstances, it became necessary, for the security of the infant, to appoint another person as his guardian. He cited a case in 8 Simons, 346.

Mr. Rogers opposed the application. The marriage did not put an end to the guardianship of a woman who had been appointed by order of court, and there was no ground in this case to deprive the mother of the care of her child. He cited *Villereal v. Mellish*.<sup>a</sup>

Lord Langdale, M. R.—The usual course is, when a female guardian marries, to direct a reference to the Master to appoint a proper person to be a new guardian of the infant. It does not, however, follow that a mother is by her marriage to be deprived of the guardianship of her children. When a woman not married is appointed guardian, she is appointed so under circumstances which place her in the situation of a person *sui juris*. But when she marries she is no longer *sui juris*, but liable to be controlled by her husband. The question is, what is the most convenient form of referring it to the Master to appoint a new guardian? The lady is quite at liberty to propose herself, and it may be very proper to appoint her. But there must be an inquiry, whether by the act of marriage she has not deprived herself of the guardianship. The mere fact of marriage is sufficient to induce the Court to direct this inquiry, and it was quite right for Mr. Holt to inform the Court of the marriage. If the sureties are not discharged, still they are placed in a different position. He should not make any other order than what he understood to be the usual order in such cases: that is, to direct a reference to the Master, with liberty

<sup>a</sup> 2 Swanst. 533.



to the former guardian to go in and shew that notwithstanding her marriage she is still a fit person to have the care of the infant.

*In the matter of Reg. v. Gornall, an infant, at Westminster, Trinity Term, 1839.*

### Equity Eschequer.

#### TITHES.—MODUS.—ANCIENT PASTURE.

*A customary payment of 4d. per acre yearly for ancient pasture land, always in pasture from time of legal memory, may be a good modus in lieu of tithe in kind; but such a modus is bad if the land has been ploughed, broken up, or meadowed within the time of legal memory, although again restored to pasture. Circumstances in which the Court will not direct any issue to try the validity of a modus.*

This was a suit instituted by the Reverend Thomas L. Cooper, rector of the parish of Mablethorpe, St. Mary's, in the county of Lincoln, for an account of tithe, from the date of his institution and induction in 1831, against John Byron and nine other persons, occupiers of pasture land in that parish. The defendants, in answer to the claim, set up a modus to the effect, that from time immemorial there has been and still is within that part of the parish called Mablethorpe St. Mary, an ancient custom, that if any persons not resident in the parish occupy any pasture land, being ancient pasture land within the parish, he shall pay a modus of 4d. per acre for the same, on the first day of August in every year, in lieu of tithes, and if any part of such ancient pasture land be ploughed up or meadowed, the occupier shall pay full tithe for the same; but if it be again restored to pasture, it shall be entitled to the benefit of the said modus, in the possession of non-resident occupiers. The question whether this was a good and valid modus was argued before the Lord Chief Baron on several days in March, and in May last, by Mr. *Simpkinson*, Mr. *Swanston*, and Mr. *Anderdon*, for the plaintiff; and by Mr. *Boteler*, Mr. *Bethell*, and Mr. *Sharpe*, for the defendants. The line of argument used, and the main points in the cause, may be collected from the following judgment, delivered on the 4th of July.

Lord Abinger, C. B. after stating the nature of the plaintiff's claim, and of the modus, said, some of the lands for which the defendants allege the modus, are ancient pasture without interruption; some are ancient pasture which had been broken up, but again restored to pasture, and so again, as the defendants allege, covered by the modus. The first thing to be considered is the meaning of the words "ancient pasture." The first and popular sense is that of ancient pasture as contrasted with modern. This sense does not necessarily include a state of pasture beyond the time of legal memory, and cannot be the sense of the words as used in pleading this modus; if it be, this modus is bad, not merely for the uncertainty of the lands and of the time when it

attached upon them, but from the evident absurdity of a contract intended to apply to lands that might in future times become ancient pasture, according to no definite rule for measuring its antiquity, but by the fluctuating judgment of men in different ages to come. There is another sense of the words, which seems to me to be the true sense, and the most consistent with the legal use and understanding of them; and that is, that the antiquity of the pasture is carried up to the time of legal memory, that is, to the time of Richard I; and this interpretation of the words seems to dispose of the modus as pleaded. It is a contradiction in terms to call that land "ancient pasture," which has been 100 years arable, and in the last year again converted into pasture, merely because it was originally ancient pasture. The quality and epithet of "ancient" cannot be applied to a subject of recent origin; the land is not now ancient pasture, because it was anciently in pasture; it must continue from all antiquity, and now remain, in pasture, to support a modus for ancient pasture. Besides, the finding of the jury in the case of *Ashfordby v. Newcomen*, in the reign of Charles 2, that the customary payment of 4d. an acre for pasture was for "ancient pasture," when the same remained pasture, disposes in point of fact of the modus as here pleaded. It surely cannot be expected that a modus should be established upon modern evidence directly opposed to the modus found by a jury in the time of Charles the 2d, upon the trial of an issue involving the same question. The counsel for the defendants, aware of these objections, endeavoured to support the modus by arguing that the modus is not for pasture, but for the land when in pasture; that the lands which are covered by it are well known and easily distinguished, by the appellation of ancient pastures, but are not necessarily of that description; that these words mean no more than to indicate a portion of the lands in the parish, the quality, position, and boundaries of which are well known and which from time immemorial have been covered by a modus of 4d. an acre when in pasture, or in the occupation of a non-resident. I am not prepared to say that a modus so pleaded, would be good in law. Nothing is more common than a modus for land in a certain cultivation, but which pays tithe in kind when otherwise cultivated; and it is too late after the case of *Chapman v. Monsoon*,<sup>b</sup> to deny that a modus may be good for lands occupied by an out-dweller, which nevertheless pay full tithes in the hands of an inhabitant, whatever I may think of the reasoning upon which that case was founded. But would a modus so pleaded have been sustained by the evidence in this case? I think not, though in the whole of this immense mass of evidence, ancient and modern, the idea of ancient pasture is connected with the modus set up, whereas upon this mode of pleading the modus it would be no answer to it to shew that the lands, to which

<sup>b</sup> 2 P. Wms. 565.

It is applied in fact, were not pasture lands until after the time of Richard 1; neither would it be any answer to a *modus* so pleaded, to shew that it did not apply to many portions of land in the parish, that were undoubtedly ancient pasture in the legal sense of the words; because a custom so pleaded being applicable to specific lands, the non-application of it to other lands of the denomination of ancient pasture would become immaterial, whereas nobody can deny that the *modus* as here pleaded, involves a custom extending not only over the pasture lands the defendants possess, but over all the lands in the parish which go under the denomination of ancient pasture; and the rector upon these pleadings has a right to establish his claim upon the negative of that general custom. The verdict of the jury in *Ashfordby v. Newcomen* is inconsistent also with this mode of interpreting the *modus*, for that verdict confines the *modus* to pasture lands, "remaining in pasture," which implies that, when once the pasture is broken up, the *modus* is gone. Upon these several grounds I cannot think that I can establish the *modus*, either as it is pleaded in words, or as it has been interpreted by the defendant's counsel. But it has been pressed upon me that there is evidence to support a *modus* in a more limited form: *viz.*, a *modus* of 4*d.* an acre for ancient pasture properly so called, that is, continuing so from the beginning to the present time, when in the hands of out-dwellers. And that with reference to the tithe commutation act, which will prevent the further agitation of this question, I ought to direct an issue to be tried by a jury whether there be any such *modus* as is pleaded, with liberty to endow on the *postea* any other *modus* they may find; which it is said will not prevent the defendants from setting up that branch of the *modus* before the tithe commissioners, though there should be a decree against them in this suit. I think, however, that an issue could not be directed with such an object, except at the exclusive expence of the defendants. I am of opinion that I ought not in any case to direct an issue for the purpose of giving the defendants an opportunity of throwing the whole of this mass of evidence at the heads of a jury in order to take the chance of their finding a *modus*, which either has not been pleaded or has not been proved; and if the evidence now before me would justify a decree partially establishing the *modus* they have pleaded, it appears to me that it is my duty to determine that question myself, and not to leave it to a jury. Under this impression I have, since the argument, read over the whole of the evidence, with the pleadings in all the suits which have been instituted touching the tithes of this parish from the reign of Charles 2 down to the present time, in order to satisfy myself whether there was sufficient evidence to sustain a *modus* of 4*d.* an acre for ancient pasture, in the hands of out-dwellers, the land continuing in pasture (for that is the *modus* to which the evidence taken altogether seems to approach the nearest); and it is so remarkable that in each of these suits, except the 1st and

the 4th, the *modus* is differently pleaded. Considering these several cases therefore as a series of judicial decisions, they do not appear to me to justify a conclusion in favor of the *modus* when put in opposition to various other considerations, which arise upon a review of the whole case. As the utmost degree of certainty to which I can arrive from the whole of the evidence in this case must borrow some light from conjecture, I own that I think it much the most probable conjecture that this payment of 4*d.* an acre by out-dwellers for ancient pasture, was in its origin nothing more than a reasonable composition made long since the time of legal memory for the tithe of agistment. This is properly the tithe of pasture. The farmers dwelling and having their homesteads out of the parish, would very probably have driven their sheep home to be sheared and to lamb, and stocked their pasture in this parish with nothing but barren cattle, unless they could make a composition with the rector for the tithe, and thus leave him nothing to claim but agistment tithe, for which 4*d.* might, for aught I know, be something more than a reasonable sum in the time of Charles 2*d.* Upon the whole therefore it appears to me that the plaintiff is entitled to have an account of his tithes from the period of his induction, and the decree must be for the plaintiff, establishing his right to the tithe, with costs.

*Cooper v. Byron and others.*—At Westminster and Serjeant's Inn. March, May, and July 4th, 1839.

#### Queen's Bench.

[Before the Four Judges.]

#### MANDAMUS.

*The auditors of a parish vestry appointed under a general act, served on the clerk of certain church trustees, appointed under a local act, a notice to produce the accounts of the trustees before the auditors on the 2d of April following. One of the days included in the notice was Sunday. The regular monthly meeting of the trustees took place on the Thursday following, when the clerk might have submitted the notice to them for their inspection: Held, that the trustees having disregarded this notice, the auditors were not entitled to a mandamus to compel them to produce their accounts.*

In this case a rule had been obtained for a *mandamus*, calling on the defendants, who were appointed under the 56 Geo. 3, c. xxxix. (the local act for building a parish church), to lay before the auditors of the parish accounts, appointed under the General Vestries Act, 1 & 2 W. 4, c. 60, a full statement of those accounts from Michaelmas, 1837, to Lady Day, 1838. The demand was made on the clerk of the trustees, not on the trustees themselves; and it was made on the 28th of March, requiring the accounts to be laid before the auditors on the 2d of April, Sunday being one of the days of the interval.

Mr. Peacock shewed cause against the rule. The right of the auditors to call for these ac-

counts is not disputed,<sup>a</sup> but they have not in this instance pursued the proper course. In the first place, the service of demand is wrong, for the demand ought to have been on the trustee themselves, and not on their clerk; or secondly, it ought to have been made in such time as to give the clerk the opportunity of consulting the trustees; and as this has not been done, the notice is insufficient in that respect. As to the first point, the clerk is the mere officer of the trustees, and has no right to take upon himself to lay the books of the trustees before the auditors, without first obtaining the consent of the trustees. To call on a person to do that which he had neither the right nor the power to do, is a wholly nugatory proceeding. There has not been any sufficient refusal here to justify this application for a mandamus. In *The King v. The Wilts and Berks Canal Navigation*,<sup>b</sup> the committee of the navigation was directed to enter all accounts, &c. in books, which books were to be open at all seasonable times to the inspection of proprietors. A proprietor applied to the clerk of the trustees for an inspection—the clerk said that he would refer the demand to the committee. The proprietor himself attended the committee and repeated his request. The chairman said that the committee would take time to consider it. Ten days afterwards the proprietor, again applied to the clerk, who refused the inspection. The Court held that there had been no sufficient refusal by the committee to warrant the granting of a mandamus. That case exactly applies to the present. Then again, it is clear that timely notice was not given. The trustees meet on the first Thursday in every month, and opportunity ought to have been given them to consider the demand, and to authorize their clerk to furnish the accounts.

The *Attorney General*, in support of the rule.—The service of the demand on the clerk of the trustees was a service on the trustees themselves. He was their officer, and was therefore competent to receive any notice or demand made on them, and they were to that extent bound by his acts. As to the question of time, the notice here was in sufficient time. The trustees have had this demand made on them two or three times before the present occasion, and they have always evaded the performance of their acknowledged duty. They were aware that it would be made—they could not have been taken by surprise. They might have met on the regular meeting day of the month of March, and have given authority to their clerk to hand over the books. If this mandamus is not granted the provisions of the General Vestries' Act will be totally evaded.

Lord Denman, C. J.—When parties ask for the summary interference of this Court they should take care to do what will entitle them

to have their application granted. That has not been done here. The rule must be discharged.

Mr. Justice Patteson.—I do not know whether the trustees meant to evade the provisions of the general act; but it seems to me that the parties making this application have evaded the provisions of the local act. By not following those provisions they have disentitled themselves to the assistance of this Court.

*Per Cur.*—Rule discharged.—*The Queen v. The Church Trustees of St. Pancras*, T. T. 1839. Q. B. F. J.

#### PROHIBITION.—SPIRITUAL COURT.

*In a suit in the Ecclesiastical Court, for the subtraction of tithes, the defendant set up by way of responsive allegation, a lease of the tithes in question, among others, from the plaintiff to certain persons therein mentioned. The Ecclesiastical Court was about to adjudicate on the libel and on the answer thus put in, when a prohibition was applied for: Held, that a prohibition would not lie, for that this allegation did not directly put the validity of the lease in issue; and that on the face of the proceedings there was nothing to shew that the Ecclesiastical Court was exceeding its jurisdiction.*

This was a rule for a prohibition to be directed to the Ecclesiastical Court, to prohibit it from proceeding further in a suit instituted by the plaintiff against the defendant for the subtraction of tithes, and in which the question was stated to be, whether the plaintiff had a right to all the tithes of the parish or only to some part of them. The affidavits on which the rule was obtained set forth that the validity of a lease of the tithes was in issue in the Ecclesiastical Court, and on that ground the prohibition was claimed. The libel contained several allegations to the following effect:—First, that the plaintiff was impropriator and proprietor of the tithes of corn, grain, hay, wool, and lambs; secondly, that he had been so for the last sixty years; thirdly, that he and those under whom he claimed had been impropriators, &c. from time immemorial; fourthly, that the defendant was a parishioner, &c. and was liable to pay tithes, and that he was within the jurisdiction, &c.; and lastly, that he had taken away the tithes, &c. The first answer of the defendant admitted that the plaintiff was the impropriator of the tithes of corn, grain, and hay, but denied that he was so of the tithes of wool and lambs: then it alleged that the plaintiff was the impropriator of the small, and not the great tithes, and that another person was entitled to the latter. The answer then traversed the second and third articles of the libel, and proceeded to allege that the defendant was not a parishioner of the parish in which, &c. in the month of June 1834, when the alleged subtraction of tithes took place. The answer then, by way of responsive allegation, went on to introduce a lease of the tithes alleged to have been granted by the plaintiff:

<sup>a</sup> It had been decided in *The King v. The Trustees of Saint Pancras New Church*, 5 Nev. & M. 219; 3 Ad. & El. 535, and again in 1 Nev. & Perry, 507.

<sup>b</sup> 3 Ad. & El. 477.

it admitted that the defendant had in his own occupation fifteen acres of grass land in the parish—alleged that the titheable produce thereof was not of greater value than 5*l.*; and then stated that Robert Frost and William Slater, farmers, of the same parish, claimed to be entitled to the tithe thereof, in virtue of a lease theretofore granted to them by the plaintiff, and that they had in virtue of the said lease demanded the same tithes of the defendant, and so he disbelieved the title set up by the plaintiff. The answer then went on to admit that certain tithes were due from the plaintiff; but it set up the title to them to be in the vicar, and not in the impropriator; but protested that if due to the impropriator, then that he had leased the same to Frost.

Mr. Kelly and Mr. Whitehurst shewed cause against the rule. As to the objection that there is a right set up in the vicar, and that the decision of that right may involve the trial of a custom or prescription, the answer is to be found in Comyn's Digest,<sup>a</sup> where it is distinctly laid down in very general and comprehensive terms, that the cognisance of the subtraction of tithes belongs to the Spiritual Court. "So if a suit be in the Spiritual Court for tithes, where the question is whether they belong to the parson or vicar, no prohibition goes, for both are spiritual persons." That is exactly the case here. In *Cheeseman v. Hobie*,<sup>b</sup> the suit was precisely the same as the present, and the rule stated in Comyn was there acted upon. Another ground set up for the prohibition is, that the Ecclesiastical Court will have to try a question whether a lease has been granted or not. If that was directly the question in issue, it is possible that a prohibition ought to issue; but in fact that question can only come incidentally before the Court. If it only occurs incidentally, the prohibition cannot issue. The authority that will be relied on by the other side is Comyn's Digest:—"So if on a libel for tithe the defendant makes title by a lease, for this is determinable by the common law," and for that Rolle's Abridgment is cited.<sup>c</sup> But this case does not at all resemble the one there put. In that case the tithes being claimed by the impropriator, the defendant set up a title to them in himself upon a lease. The issue would of course be joined on that fact, and the Ecclesiastical Court could not proceed to decide that issue, without determining as matter of substance the existence and validity of the lease itself. No such matter will be decided here. In another part of Comyn's Digest,<sup>d</sup> there is something which much more resembles the present case. There it is said that "though the bounds of the parish be in dispute, or, if a suit be against A., being a pariahoner, for a portion of tithes, or upon a modus, who insists that it belongs to the vicar, or *vice versa*, or to him by a lease from the vicar," a prohibition will not go. If either of such questions only comes incidentally before the Court, no prohibition will lie. Here

the question only arises incidentally: the rule for the prohibition must therefore be discharged. This Court will not presume that the Ecclesiastical Court will proceed in a manner contrary to law. *Shotton v. Friend*.<sup>e</sup> In the case of *Byerly v. Windus*,<sup>f</sup> where a prohibition was granted, the libel shewed on the face of it that the matter which had been made the subject of the suit in the Ecclesiastical Court, was something that did not fall within the jurisdiction of such Court. That is not the case here. *French v. Trask*,<sup>h</sup> will be cited on the other side. There prohibition was granted on an affidavit, that the defendant (to a libel for tithes in kind in the Spiritual Court,) had answered on oath, or pleaded a modus, without its appearing that the modus was regularly pleaded below, so as to be put in issue there; but there the allegation of the modus brought the existence of the modus directly into question, and did in fact amount to a plea that the tithes were not payable in consequence of a modus. It is admitted that a plea putting the existence of a lawful modus directly in issue cannot be adjudicated in the Spiritual Court: but that rule does not apply here, for here the modus is not in issue. This case is therefore one which on the face of it may properly be decided in the Spiritual Court, and the rule for the prohibition must consequently be discharged.

Mr. K. Denman, in support of the rule.—The proceedings here must be stayed. The question of the validity of the lease and of the lawful right to tithes is directly before the Court; for the responsive allegation of the lease amounts to a plea setting up the lease by way of answer to the claim, and so putting the validity of the lease in issue: a common law question is therefore in this case submitted to an ecclesiastical jurisdiction. The principle of the case of *French v. Trask* consequently applies, and this Court must interfere. That principle was fully recognised in *Darby and Nulley v. Cousins*.<sup>i</sup> The authority from Comyn's Digest<sup>j</sup> is directly in point. The responsive allegation here brings the validity of the lease directly into question; and in this case therefore, if in any whatever, the prohibition ought to issue.

Lord Denman, C. J.—The rule must be discharged. *French v. Trask* appears at first sight like the present, but it is not so. A distinction was there taken by Mr. Barrow in argument, and pressed upon the Court, between an answer alleging a modus, and a plea in which it was pleaded. The Court, however, proceeded in spite of that argument to grant the prohibition; so that that case seems so far an authority for granting this rule; but the resemblance is at an end when we refer to the observation of the Court in that case, namely, that there was nothing there to try in the Court below but the modus. Here it is said that there is nothing to try but the lease. But I am convinced by reference to the authorities that that is an erroneous view of the case, for it appears that that lease forms no necessary part of the proceedings in

<sup>a</sup> Tit. Prohibition, G. 5—6. <sup>b</sup> Willes, 608.

<sup>c</sup> Tit. Prohibition, F. 14.

<sup>d</sup> 1 Roll, 61. <sup>e</sup> Prohibition, G. 6.

<sup>f</sup> Salk. 547.

<sup>g</sup> 5 Barn. and Cres. 1.

<sup>h</sup> 10 East, 347.

<sup>i</sup> 1 Term Rep. 552.

<sup>j</sup> Tit. Prohibition F. 14.

the case, as the *modus* did in *French v. Tyack*. There is nothing in the way of a plea, alleging the lease as a substantive defence, or tending to shew that that is the point in issue. If it should afterwards appear that it is so, that would be a different matter; but in the meantime there is nothing on the face of the proceedings in the Court below that would authorise us to interfere at this moment with a prohibition.

Mr. Justice *Littledale*.—I am entirely of the same opinion. What is stated in the responsive allegation is entirely by way of personal answer. As far as appears on the face of the proceedings, there is nothing improper to be tried in the Ecclesiastical Court.

Mr. Justice *Patteson* and Mr. Justice *Williams* concurred.

Rule discharged, with costs.<sup>k</sup>—*Earl Beauchamp v. Farnar*, T. T. 1839. Q. B. F. J.

#### LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

##### House of Lords.

- To amend the jurisdiction for the Trial of Election Petitions. [For 2d reading.]
- To amend the Law touching Letters Patent for Inventions. [For second reading.]
- To continue the Turnpike Acts. [For 3d reading.]
- To prevent persons from losing their votes at an election by removal after the preceding Registration. [Postponed.]
- To amend the Law relating to the Custody of Infants. [In Committee.]
- To amend the Law relating to double and treble Costs. [For second reading.]
- To amend the Imprisonment for Debt Act. [For second reading.]
- For the Enfranchisement of Lands of Copyhold and Customary Tenure. [For second reading.]
- To explain and amend the Tithes Commutation Act. [In Committee.]
- To amend the 1 Vict. c. 80, for exempting certain Bills and Notes from the Usury Laws. (Second Bill.) [For third reading.]
- To regulate the Proceedings in the Stannary Courts. [In Committee.]
- To indemnify Persons omitting to qualify, and to relieve Clerks to Attorneys. [In Committee.]

<sup>k</sup> A prohibition lies to an Ecclesiastical Court where the question of custom or no custom is distinctly raised on the face of the libel and answer. *Rhodes v. Oliver*, 2 Har. & Wol. 38. See also *Hart v. Marsh*, *id.* 341, and *Bodenham v. Ricketts*, *id.* 132; and see *Ex parte Farmer*, 15 L. O. p. 268, where, though the point before an Ecclesiastical Court in a case within its jurisdiction involved the decision of something which by the rules of the common law could only be rightly decided in one way, this Court would not presume that the Ecclesiastical Court would decide wrongly, and therefore refused a prohibition. S. C. *nom. Reg.*, *Ex parte Farmer*, v. *Chesterton*, 1 Wilm. Woll. & Hod. 19.

##### House of Commons.

##### ADMINISTRATION OF JUSTICE.

- To improve County Courts. Lord John Russell.  
[In Committee.]
- To regulate and enlarge the Summary Jurisdiction of Justices. Lord John Russell.  
[In Committee.]
- Small Debts Court Bills No. 2, for the following places:—
 

Aberford,	Pontefract,
Bury (Lancashire),	Rotherham,
Eckington,	Tavistock,
Grantham,	West Ham,
Kingsbridge and	Worksworth,
Dodbrooke,	Yorkshire.
Leeds,	Belper.
Liaseard,	Glossop.
Liverpool,	Chesterfield,
Newton Abbot,	Oldham,
Nottingham,	Warrington,
and	Rochdale.
Mansfield,	

- To abolish Grand Juries. Mr. Pryme.
- For regulating the High Court of Admiralty. [In Committee.]

##### LAW OF ELECTIONS.

- For the registration of Parliamentary Electors. [In Committee.] Mr. Attorney General.
- Controverted Elections. Lord Mahon.  
[For 2d reading.]
- For establishing a Court of Appeal from the Revising Barristers. [Mr. C. Buller.]  
[In Committee.]

##### HIGHWAYS.—SEWERS.—RATES.—TURNPIKES.

- To amend the Laws relating to Highways, No. 2. [In Committee.] Mr. Barneby.
- To alter and amend the Laws relating to Sewers. In Committee.] Mr. Christopher.
- For relieving Poor Persons from Rates. [For 2d. reading.]

##### Bills passed.

- Turnpike Acts Continuance.
- London City Police.
- Metropolis Police.
- Annual Indemnity.
- Register of Births, &c.

#### THE EDITOR'S LETTER BOX.

We shall not be able to answer "A Sketcher" till next week.

A correspondent will find that we have already given an account of several Legal Discussion Societies. The one last formed met in Lyon's Inn Hall, and we presume continues there still.

The communications of A. and "Civis" will appear next week.

We shall be able in our next number to state the particulars of an application by the Incorporated Law Society to the Court of Common Council for the appropriation of a room for Solicitors adjoining the Courts of *Nisi Prius* in the city of London.

# The Legal Observer.

SATURDAY, JULY 27, 1839.

— "Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## ON THE TRANSFER OF SHARES IN JOINT- STOCK COMPANIES.

JOINT-STOCK COMPANIES form so important a feature in the commercial transactions of the present century, that we have from time to time brought before our readers the cases relating to them. When established for the promotion of useful objects, and properly conducted, these institutions not only conduce to private advantage but to much public good; and we conceive that the present temper of the courts, whilst it would discourage a company got up for mere speculative purposes, is quite willing to favour such as are established *bond fide* for legitimate purposes. We wish on the present occasion, therefore, to point out one decisive evidence of illegality in such companies.

By the 6 Geo. 1, c. 18, s. 18, commonly called the Bubble Act, it is enacted that all public subscriptions, receipts, payments, assignments, transfers, pretended assignments and transfers, and all other matters and things whatsoever, for furthering, countenancing, or proceeding in any such undertaking or attempt, (as therein mentioned), *and more particularly the acting or presuming to act as a corporate body, the raising or pretending to raise transferrable stock, transferring or pretending to transfer or assign any share in such stock, without legal authority, shall be deemed illegal and void.* A doubt arose on this section whether "the mere raising transferrable stocks in any case, was *per se* an offence against the act, unless it had some relation to some undertaking or project which had a tendency to the common grievance, prejudice, or inconvenience of his Majesty's subjects, or of great numbers

of them;" and Lord *Ellenborough*, C. J.,<sup>a</sup> seemed to think that this must be established to render a company for raising transferrable stock illegal; but it is to be observed that, in the company which came before the Court in that case, the shares were not transferrable at the will of the holder, and this doubt has been set at rest by subsequent decisions. Thus, in *Joseph v. Pebrer*,<sup>b</sup> in assumpsit for work and labour, and money expended in the purchase of shares in a concern called "the Equitable Loan Bank Company," it appeared that the company professed to have a capital of 2,000,000*l.*, in shares of 50*l.* each, that a deposit of 1*l.* per share was required on the delivery of certificates for shares to the holders, that the shares were to be transferrable without any restriction, and that the holders were to be subject to such regulations as might be contained in any act of parliament passed for the government of the society, and in the mean time, to such regulations as might be made by a committee of management. It was held by the Court of King's Bench, that upon this evidence the company must be declared to be illegal and within the operation of the 6 Geo. 1, c. 18, as having transferrable shares, and affecting to act as a body corporate, without authority by charter or act of parliament. In *Ellison v. Bignold*,<sup>c</sup> this unlimited power of transferring the shares was also made the test of the illegality of the company; and Lord *Eldon*, C., held that a voluntary society of insurance by way of mutual guarantee, is or is not illegal according as the shares of the money laid up are or are not transferrable

<sup>a</sup> *Rex v. Webb*, 14 East, 406.

<sup>b</sup> 3 B. & C. 639; 5 Dowl. & Ry. 542. See also, *Pratt v. Hutchinson*, 15 East, 511, there cited.

generally to persons not members. In *Kinder v. Taylor*,<sup>d</sup> Lord Eldon, C., also threw doubts on *Rex v. Webb*. That case, he said, was scanty in argument, and the common law was not considered in it, because it was an indictment upon the statute.

These cases, however, were all decided before the repeal of the Bubble Act. The same rule has, however, been held to apply since its repeal by the 6 Geo. 4, c. 91, both at Law and Equity. In *Duvergier v. Fellows*,<sup>e</sup> Best, C. J., delivered the following opinion. Speaking of the company which came before the Court in that case, he says: "But the shares were to be transferrable. There can be no transferrable shares of any stock, except the stock of corporations, or of joint stock companies created by act of parliament. When it is said the shares were to be transferrable, that must mean that the assignee was to be placed in the precise situation that the assignor stood in before the assignment; that the assignee was to have all the rights of the assignee, and to take upon him all his liability. Now the assignee can join in no action for a cause of action that accrues before the assignment. Indeed, the members of corporations cannot assign their interest and force their assignees into the corporation without the authority of an act of parliament. Such authority is expressly given by the Bank Act, the South Sea Acts, and by other statutes, creating companies that possessed stock which it was deemed proper to render transferrable. The pretending to be possessed of transferrable stock, is pretending to act as a corporation and pretending to possess a privilege which does not belong to many corporations."

This case has since been followed by the present Vice Chancellor. In *Blundell v. Winsor*, first reported 14 L. O. 307, and recently by Mr. Simons,<sup>f</sup> a joint stock company formed for working gold mines in North America, the shares of which might be increased to an unlimited extent, and were made assignable at the discretion of the holders, was held to be illegal and fraudulent, and a demurrer to a bill filed by one of the shareholders against the others for the purpose of carrying into effect a dissolution of the company, was allowed.

"The fair inference to be drawn," said his Honor, "from the provisions of this deed, is, that certain persons were to form a

company, which might be increased to an unlimited extent, and that the shareholders were to have the power of transferring their shares to whomsoever they pleased, without any sort of controul: the deed, therefore, necessarily represents that the persons who should assign their shares, would get rid of all the liabilities attached to them; and that the persons who should take their shares, would take them just as the assignors held them. It is clear, however, that this could not be done. In my opinion, therefore, the deed held out to the public, as an inducement to them to become partners in the working of these imaginary gold mines, a false and fraudulent representation that they might continue partners in the undertaking just as long as they pleased, and then get rid of all the liability that they had incurred, by transferring their shares to some other persons. In the case of *Duvergier v. Fellows*, 5 Bing. 248, which, it must be observed, was decided after the Bubble Act had been repealed, Lord Chief Justice Best says, "there can be no transferrable shares of any stock, except the stock of corporations or of joint-stock companies created by acts of parliament. When it is said the shares were to be transferrable, that must mean that the assignee was to be placed in the precise situation that the assignor stood in before the assignment: that the assignee was to have all the rights of the assignor, and to take upon him all his liability. Now the assignee can join in no action for a cause of action that accrued before the assignment. Such rights of action must still remain in the assignor, who, notwithstanding he has retired from the company, will still remain liable for every debt contracted by the company before he ceased to be a member." (See 5 Bing. 267.) All these reasons are applicable to the present case; and my notion is that this deed is not only illegal, because it trenches on the prerogative of the king, by attempting to create a body not having the protection of the king's charter, the shares of which might be assigned without any controul or restriction whatsoever; but also because it holds out to the public a false and fraudulent representation that the shares could be so assigned. The undertaking in question appears to have been a wild project, entered into by speculating persons for the purpose of deluding the weak portion of the public of this country, who too often allow themselves to be gulled by any specious scheme that holds out a prospect of gain: and what is stated to

<sup>c</sup> 2 Jac. & W. 503.

<sup>d</sup> George on Joint Stock Companies, 120.

<sup>e</sup> 5 Bing. 267.

<sup>f</sup> 8 Sim. 601.

have taken place with regard to it, might have been reasonably expected, namely, that all the capital has been expended, and no profits realized, but debts and liabilities incurred to a large amount. The more such schemes are discouraged by courts of justice, the better it will be for her Majesty's subjects; and therefore I shall allow the demurrer with costs."

We may lay it down, therefore, that the only act which has been expressly stated to be an assuming to act as a corporation, and to have been universally held to be illegal, is the making the shares of a company transferrable at the will of the holder.<sup>§</sup>

We may here mention another point of considerable consequence to persons purchasing shares. It is, that if the concern does not go on, they may claim the whole of the money deposited on the shares, and the expenses of the company must fall on the persons who started the concern. This was decided in the case of *Nockels v. Croshy*,<sup>h</sup> where a scheme for establishing a tontine was put forth, stating that the money subscribed was to be laid out at interest, and after some subscriptions had been paid to the directors, in whom the management of the concern was vested, but before any part of the money was laid out at interest, the directors resolved to abandon the project; and the Court of King's Bench decided that each subscriber might, in an action for money had and received, recover the whole of the money advanced by him, without any deduction of any part towards the payment of the expenses incurred.

#### THE PENNY POSTAGE.

THE Penny Postage may now be considered as the law of the land; and it may come into operation in a few weeks. At any rate we will venture to say that ere our friends have returned from their long vacation trips it will be in full operation. Nay, we do not know that they may not feel the benefit of it during their time of relaxation. The Chancellor of the Exchequer has declared that "it is an experiment tried for the benefit of the world," and that he will immediately open negotiations with France and Belgium for introducing it into these and other countries. We may perhaps expect therefore, that some lawyer, worn with six

weeks travel, on inquiring for his letters at Paris in the month of October, may be simply asked for "deux sous, Monsieur;" or when, peradventure, after exploring the Rhine, knapsack on back and stick in hand, he finds out the "Post" at Cologne or Aix-la-Chapelle, he will not, on paying a silber-groschen, receive his letter, and much copper money into the bargain? We do not know, indeed, that he will be required to pay any thing at all. But however doubtful we may be of the speedy advantages to foreign travellers, we are quite sure of the gain to all our friends who may seek the sea-side, or be found *intra quatuor maria*. They may have a daily, and, in many places, even a more frequent account of all that is going on at head-quarters. The old Post-office, we are told, could "waft a sigh from Indus to the Pole," but the new Post-office will only charge a penny for the carriage. Besides, it may, if necessary, waft a latitat, or a case submitted to counsel, or we know not what. And now we come to the climax of the benefits to be conferred by it on the profession. We have ascertained that it will just suit the Legal Observer! By the 12th section of the Bill, of which we have elsewhere given an abstract, a letter is to be held to include "newspapers and any other packet or paper transmitted by the post." Now we find that we are just the right weight, envelop and all; and we therefore felicitate our country friends, whether permanently fixed in the provinces, or solacing themselves temporarily with a little fresh air and salt-water, on the fact that they may still know how the legal world goes on every Saturday, although many miles away. To be serious, we cannot but look on this measure as one which must be of great benefit to the legal profession, and we are sure they will give it their attention and facilitate its operation, and no class can do this so effectually.

#### THE CLOSE OF THE SESSION.

THE Session of Parliament is now fast hastening to its close; and certainly we never recollect one in which more has been undertaken and less performed. Of the long list of bills which have been brought in, how few have been carried through the House of Commons! and how fewer still will pass the House of Lords! There is now a sort of nightly slaughter of bills, and in most cases they perish unnaturally by

<sup>§</sup> See also Collyer on Partnership, p. 624.

<sup>h</sup> 3 B. & C. 814.



the hands of their parents,—their place being filled up, in many instances, by fresh bills, which, in their turn, we suppose, are destined to the same fate,—the only comfort being that, like Ulysses in the Cyclop's cave, they are to be destroyed the last. The fate of these measures reminds us of Richard the Second's account of the misfortunes of kings—

"For Heav'n's sake let us sit upon the ground,  
And tell sad stories of the death of kings—  
How some have been depos'd, some slain in war,  
Some poisoned by their wives, some sleeping kill'd—  
*All murder'd.*"—

Read "bills" for "kings," and we shall find these lines very applicable. The bills "deposed" are they which are never allowed to come in: those "slain in war" are they which are thrown out on a division: those "poisoned by their wives" are they which are destroyed by their unhappy authors, who should properly sustain and cherish them—a bitter duty doubtless, therefore, to cause their death: while those "sleeping killed" are they which, in parliamentary phrase, are quietly suffered to "drop;"—but one way or other they are "all murder'd." Thus the County Court Bill was clearly "poisoned by its wife" on Monday last; in other words, it was put off by Lord John Russell for three months. On the same night Mr. Charles Buller "poisoned" his bill,—the Registration Court of Appeal Bill; and we see many others which are dying by inches, or being "sleeping killed." We shall shortly be able to give a complete account of the fate of all the bills proposed or brought in this Session, arranged under the four modes of death to which we have alluded. The work of destruction—"the slaying in war"—has commenced in right earnest in the House of Lords. There two mighty giants stand at the portals—

"Pandarus et Bitias,——"

Portam quæ ducis imperio commissa, recludunt  
Freti armis, ultroque invitant mœnibus hostem."

IX Æne. 672.

What one spares the other destroys; what pleases this, displeases that: so that between the two, we think the Queen's Printers may shut up their shop for the sale of the Acts of this Session of Parliament. We shall, however, chronicle the progress of this new "massacre of the innocents."

## PRACTICAL POINTS OF GENERAL INTEREST.

### FRIENDLY SOCIETY.

By the 4 & 5 W. 4, c. 40, s. 12, it is enacted "that if any person appointed to any office under the statute 10 G. 4, c. 56 (the Friendly Society Act) or that act, and being intrusted with the keeping of the accounts, or having in his hands or possession, by virtue of his office or employment, any monies or effects belonging to such society, shall die, or become bankrupt or insolvent, his heirs, executors, administrators, or assigns shall, within forty days after demand in writing, by the order of any such society or committee thereof, or the major part of them assembled at any meeting thereof, pay out of the estate, assets, or effects of such person all sums of money remaining due which such person received by virtue of his said office or employment, before any other of his debts are paid or satisfied, and all such assets, &c. shall be bound to the payment and discharge thereof accordingly." A person, named Mary Woodliffe, having been appointed treasurer of a friendly society, and had then in hand the sum of 149*l.* 8*s.* 9*d.*, and out at interest the sum of 50*l.* At the time of her appointment it was resolved "that she the said Mary Woodliffe is to have the sum of 149*l.* 8*s.* 9*d.*, of which she is to pay interest for 120*l.*;" and it was contended, on this ground, that it was to be considered a loan, and that she was not within the act. The Court of Review were, however, of a contrary opinion. Sir John Cross said, "This seems to me a very clear case, and I think that the commissioners have done wrong in rejecting the claim of the petitioners. It is admitted that the bankrupt held the office of treasurer of this society; but it is contended that she did not hold the 120*l.* as treasurer. It becomes material, therefore, to see the terms on which this money was intrusted to her custody. It appears, that on the appointment of the bankrupt to the office of treasurer, the funds of the society amounted to 149*l.* 8*s.* 9*d.*, of which sum it was agreed that she was to 'pay interest for 120*l.*' Now, her appointment as treasurer, and her agreement to allow interest for this sum, were contemporaneous acts; and it cannot be said that the 120*l.* did not come to her hands by virtue of her office or employment as treasurer. But then it is contended that the agreement to pay interest makes a difference in the case, and shews that this portion of the money in-

trusted to her was to be considered as a loan. It appears to me, however, that the legislature did not contemplate that the money in the hands of the treasurer was to be locked up in a chest, but that it should be deposited with the treasurer, in the same manner as with a banker. And I see nothing in the case which rebuts the presumption that the whole of the money was in her hands and possession by virtue of her office as treasurer."—*Ex parte Ray, in re Woodliffe*, 3 Dea. 537.

#### DELAY IN SWEARING IN THE NEW MASTER.

It is a great grievance to the suitors in Chancery and to the practitioners in that Court, that any delay should be permitted to take place in completing the appointment of the new Master in place of Mr. Martin. At this time of the year, it is more peculiarly injurious than at any other. In many causes which have been referred to the Master, the inquiries might be concluded and the report made, before the offices close for the vacation. In some instances, the effect of the delay may be, that the parties who have been long engaged in litigation, and who might but for the illness of Mr. Martin and the present delay, have obtained their money, will be thrown over till next term. In the mean time, some of the parties to the suit may die, and other consequent proceedings become necessary.

Why has not Sir William Horne been sworn in? There is no doubt that the Lord Chancellor offered the appointment, and that Sir William signified his willingness to accept it from his Lordship. Can it be possible that any political feeling has been permitted to interfere with the important duty of filling up the appointment? We should hope not. It may be that the offer has not been accepted with much grateful feeling towards those who were supposed to have pledged themselves to bestow a much more important office; but be this as it may, we, who are for the profession, and the profession alone, must protest against the monstrous injury which is inflicted day by day on many suitors of the Court of Chancery. The evil is already incalculable, and if the delay be continued much longer, inevitable ruin will attend many individuals.

#### CHANGES IN THE LAW

IN THE PRESENT SESSION OF PARLIAMENT.

##### No. IV.

1 & 2 Vic. c. 29.

##### PROTECTION FROM BANKRUPTCY.

*An act for the better protection of parties dealing with persons liable to the bankrupt laws.* [19th July 1839].

6 G. 4, c. 16. 2 Vict. c. 11. *All contracts, &c. bonâ fide made by and with any bankrupt previous to the date and issuing of any fiat, to be valid, &c. if no notice had of prior bankruptcy.*—Whereas by an act passed in the sixth year of the reign of his late Majesty King George the Fourth, intituled "An act to amend the laws relating to Bankrupts," it was among other things enacted, that all payments really and *bonâ fide* made by any bankrupt or by any person on his behalf, before the date and issuing of the commission against such bankrupt to any creditor of such bankrupt, (such payment not being a fraudulent preference of such creditor,) should be deemed valid, notwithstanding any prior act of bankruptcy by such bankrupt committed, and that all payments really and *bonâ fide* made to any bankrupt before the date and issuing of the commission against such bankrupt should be deemed valid, notwithstanding any prior act of bankruptcy committed, and that such creditor should not be liable to refund the same to the assignees of such bankrupt, provided the person so dealing with the bankrupt had not at the time of such payment to such bankrupt notice of any bankruptcy committed: And whereas by an act passed in this present session of parliament, intituled "An act for the better protection of Purchasers against Judgments, Crown Debts, Lis pendens, and Fiats in Bankruptcy," it is amongst other things enacted, that all conveyances by any bankrupt *bonâ fide* made and executed before the date and issuing of the fiat against such bankrupt shall be valid, notwithstanding any prior act of bankruptcy by him committed, provided the person or persons to whom such bankrupt so conveyed had not at the time of such conveyance notice of any prior act of bankruptcy by him committed: And whereas it is expedient that further protection should be given to persons dealing with bankrupts before the issuing of any fiat against them: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that all contracts, dealings and transactions, by and with any bankrupt really and *bonâ fide* made and entered into before the date and issuing of the fiat against him, and all executions and attachments against the lands and tenements or goods and chattels of such bankrupt, *bonâ fide* executed or levied before the date and issuing of the fiat, shall be deemed to be valid, notwithstanding any prior act of bankruptcy by such bankrupt committed; provided the person or persons so dealing with such bankrupt, or at whose suit or on whose account such ex-

execution or attachment shall have issued, had not at the time of such contract, dealing, or transaction, or at the time of executing or levying such execution or attachment, notice of any prior act of bankruptcy by him committed; provided also, that nothing herein contained shall be deemed or taken to give validity to any payment made by any bankrupt being a fraudulent preference of any creditor or creditors of such bankrupt, or to any execution founded on a judgment on a warrant of attorney or cognovit given by any bankrupt by way of such fraudulent preference.

2. *Act may be repealed.*—And be it further enacted, that this act may be repealed or altered by any other act in this present session of parliament.

[For an explanation of the object of this Act, see p. 179, *ante*.]

## NEW BILLS IN PARLIAMENT.

### REDUCTION OF POSTAGE DUTIES.

THE bill for the further reduction of postage, recites that it is expedient that the present rates of postage on letters should be reduced to one uniform rate of a *penny*, charged on every letter of a given weight, to be hereafter fixed and determined, with a proportionate increase for greater weights; parliamentary privileges of franking being abolished, and official franking being strictly regulated, and Parliament pledging itself to make good any deficiency of revenue which may be occasioned by such alterations of the rates of existing duties:

And that it is expedient and necessary to give by law a temporary authority to the Lords of her Majesty's Treasury to take the necessary steps to give effect to such reduction, and to make orders and regulations for the same; which reductions, orders and regulations shall have force and effect to the *fifth day of October one thousand eight hundred and forty*, and no longer. The enactments proposed, are—

1. That the Lords of the Treasury by warrant under their hands, may alter, fix, reduce or remit all or any of the rates of British or inland or other postage payable by law on the transmission of post letters, and to subject such letters to rates of postage, according to the weight thereof, and a scale of weight to be contained in such warrant (without reference to the distance or number of miles the same shall be conveyed,) and to fix and limit the weight of letters to be sent by the post, and from time to time to alter or repeal any such altered or reduced rates, and make and establish any new or other rates in lieu thereof; but so that all such warrants shall be inserted in the London Gazette *ten days at least before coming into operation*, and shall within *fourteen days* after making the

same be laid before both Houses of Parliament (if then sitting), or otherwise within *fourteen days* after Parliament shall meet.

2. Rates to be charged by Postmaster General.

3. That the Lords of the Treasury, by warrant under their hands, may suspend wholly or in part any parliamentary or official privilege of sending and receiving letters by the post free of postage, or any other *franking privilege* of any description whatsoever, as well under an act passed in the first year of the reign of her present Majesty, intitled, "An Act for regulating the sending and receiving of letters and packets by the post, free from the duty of postage," as under any other act or acts of parliament now in force, and to make such regulations for the future exercise of official franking as they shall think fit: Provided that every warrant to be issued by the Lords of the Treasury for the suspension of the parliamentary privilege of franking, shall be inserted in the London Gazette *ten days at least before coming into operation*, and shall within *fourteen days* after making the same be laid before both Houses of Parliament (if then sitting), or otherwise within *fourteen days* after parliament shall meet.

4. That the Lords of the Treasury by warrant under their hands, and inserted in the London Gazette *ten days at least before coming into operation*, may suspend, wholly or in part, the regulations and privileges established and given by law in respect of letters sent by the *twopenny post* in London and Dublin, and also by any penny post, and in respect of any other letters which may be now sent by the post at a low or reduced rate of postage or free of postage, and to declare and direct that all and every or any of such post letters shall be charged and chargeable with the like rates of postage as any other letters transmitted by the post, or to make such other regulations in respect thereof as in any such warrant shall from time to time be expressed.

5. That the Lords of the Treasury, by warrant under their hands to be inserted in the London Gazette (which warrant may be rescinded, varied or altered as they shall from time to time think fit,) may direct that letters written on stamped paper, or enclosed in *stamped covers*, or having a *stamp affixed* thereto (the stamp in every such case being of the value or amount in such last mentioned warrant to be expressed and specially provided for the purpose under the authority of this act), shall, if within the limitation of weight to be fixed under the provisions of this act, pass by the post free of postage; and also to require that every letter sent by the post shall, in the cases to be specified in any such last mentioned warrant, be written on such stamped paper, or enclosed in such stamped cover, or have such stamp as aforesaid affixed, or that in default thereof, or in case the stamp on which any letter shall be written, or the stamp on the cover in which it shall be enclosed, or to which it shall be affixed, shall be of less value or amount than in such warrant shall be expressed, such

letter shall be charged and chargeable with such rate of postage as such warrant shall direct.

6. That the Lords of the Treasury may direct the commissioners of stamps and taxes from time to time to provide proper and sufficient dies or other implements for expressing and denoting the rates or duties.

7. Account to be kept of stamps.

8. Rates on stamped covers to be deemed stamp duties.

9. That all post letters shall be posted, forwarded, conveyed and delivered, under and subject to all such orders and directions, regulations, limitations and restrictions as the post master general, with the consent of the Lords of the Treasury, shall from time to time direct.

10. Masters of outward bound vessels required to take bags of letters.

11. Treasury may alter gratuities to masters of vessels carrying bags of letters.

12. That whenever the word "letter" or "letters" is used in this act, the same shall be held to include newspapers, and any other packet, paper, article or thing transmitted by the post, but not so as to deprive newspapers of any privilege they now legally possess of passing free of postage; and that the provisions of this act shall be construed according to the respective interpretations of the terms and expressions contained in the said secondly herein-before mentioned act of the first year of the reign of her present Majesty, so far as those interpretations are not repugnant to the subject or inconsistent with the context of such provisions.

13. Quorum of Lords of the Treasury.

#### AMENDMENT OF THE BILLS OF EXCHANGE BILL.

On the third reading of this bill, the Marquis of *Lansdowne* moved two amendments, by way of rider. There is (he said) a prevalent practice in the city of London, which is technically called "forbearance,"—that is, that when a bill is expired, it is renewed without a payment, and fresh advance; and the object of one of my amendments is to enable a person who forbears to take the same rate of interest as if there were a new advance made. My other suggestion is, to extend the operation of the bill to other securities besides those already mentioned;—to warrants of goods, bills of lading, and other commercial securities.

Lord *Ashburton*.—I consider that the taking any amount of interest on goods in pledge would be very dangerous, and as totally distinct from the principle on which the other parts of the bill have been introduced.

The bill was then read a third time.

The Marquis of *Lansdowne*.—I now beg leave to move the insertion of the words "warrants for goods," &c. This amendment has been pressed upon me by those who are well versed in commercial affairs; and, as warrants for goods represent property *in transitu*, I see no objection to the proposal.

Lord *Ashburton*.—Those who wish for a repeal of the whole of the usury laws, will, doubtless, agree to this amendment. Looking at the recent proceeding of the Bank, in raising the interest of money to 5½ per cent., I must say that I think that was an imprudent one; but that, in my opinion, does not justify the extension of the principle now proposed.

Lord *Brougham*.—I would caution the noble Marquis against the use of such general terms as "or other commercial securities." I am alarmed at the possible construction which a court of law might put on those words. Many things may be considered commercial securities, which the legislature does not contemplate in the application of the principle of the bill.

The Marquis of *Lansdowne*.—Well; I have no objection to strike out the words "or other commercial securities."

On the next clause being read, allowing interest above 5 per cent. to parties holding bills on forbearance,—

Lord *Wynford* said—I certainly, for one, cannot agree to this clause, for it would virtually amount to a repeal of the usury laws.

The Lord *Chancellor*.—The objection raised by my noble and learned friend (Lord *Wynford*), is the same in effect as that which your Lordships discussed and decided on a former evening. The interest on the forbearance would be interest, as it were, on a new loan.

We have inserted the above Report for the purpose of calling the attention of our readers to the mode in which the Usury Laws are by piece-meal sought to be repealed.

#### ACCOMMODATION OF ATTORNEYS IN COURT.

WE have of late laid before our readers, several letters complaining of the want of accommodation in our courts of justice for attorneys and solicitors. Some of our correspondents think that the evil would be removed by attorneys wearing gowns, by which they might be known to the door-keepers, and admitted to seats within the court. The gown being a matter of taste, we are fearful to meddle with it; but there can be no question that the attorneys have a right to convenient seats in the court. We have no doubt that beside those still appropriated to them between the bench and the bar, they had formerly a *side bar*, to the seats of which they were exclusively entitled, in the same way as are counsel to their seats, and students at law to the box assigned to them. At the "side bar," the attorneys anciently moved various matters which were granted of course, and in which it was unnecessary to employ counsel.

We think the attorneys should have a

distinct part of the court appropriated to them, and the officers in attendance should be instructed to keep it exclusively for their use. In addition to their seats in court, they should also have a convenient room for preparing or completing any papers that may be suddenly required on matters before the court, and where they may wait till their causes are called on.

The Incorporated Law Society has for some time been using its endeavours to obtain a solicitors' room adjoining the Courts at Westminster, and the result appears in the annual report, in another part of this Number. The judges and serjeants have already granted a room adjoining Serjeant's Inn Hall; and on the 18th instant, the Society presented a memorial to the Lord Mayor, Aldermen and Commons, in Common Council assembled, praying for the better accommodation of attorneys attending the *Nisi Prius* sittings in London. The memorial stated—

"That the memorialists in discharging their professional duties are frequently called upon to attend the Sittings of the several Courts of Queen's Bench, Common Pleas, and Exchequer, on the trial of actions at *Nisi Prius* in the City of London.

"That during such attendance they have occasion to hold frequent communications on matters relating to the trials before the said Courts with their clients and witnesses, many of whom are the most eminent merchants, bankers, and others extensively engaged in trade in the city.

"That sufficient accommodation is not afforded adjoining the Courts, for attorneys, suitors, and witnesses, or for the temporary safe custody of books of account, papers, deeds, or securities, or for the preparation of any matter which may be suddenly called for by the Court or counsel, and that such books, papers, and writings are frequently of great bulk and often of great value.

"That in the midst of a crowd and for want of sufficient means, the memorialists cannot discharge their important duties with advantage to their clients or satisfaction to themselves; and that confusion, mistakes, and delay frequently occur in consequence thereof.

"That it would facilitate the dispatch of legal business, and promote the due administration of justice, if a suitable room were provided near to the said Courts."

The Secretary of the Society attended with the memorial, and on the motion of Mr. *Anderton* it was ordered to lie on the table till a motion on the same subject, (of which notice had been given) should be taken into consideration. The motion referred to, is that of Mr. D. W. Wire :

"That it be referred to the City Lands Committee to examine the state of the build-

ing appropriated to the Courts of Law in the Guildhall Yard, with power for them to give the necessary directions to cleanse, repaint, and repair the same, when needful; and also to inquire whether any, and (if any) what improvements can be made therein, and what other accommodation can be provided for the attorneys and jurymen frequenting the same."

## CHARACTERISTIC SKETCHES OF LAWYERS.

WE last week extracted from "The Speeches of Lord Brougham" some passages describing, with great eloquence, the character of the late Master Stephen. We omitted several statements which appeared to be more of a political than a legal kind, and therefore unsuited to our pages. The following notices are also taken from the First Volume of the Collection of Lord Brougham's Speeches. The *Legal Observer* has ever been forward to notice whatever is meritorious and distinguished in the members of both branches of the profession. The names of *Roscoe* and *Horner*, here associated, are well-deserving of the high degree of praise which Lord Brougham has bestowed upon them, with a liberal, yet a distinguishing hand.

### THE LATE WILLIAM ROSCOE.

"Mr. Roscoe was in some respects one of the most remarkable persons that have of late years appeared in either the political or the literary world. Born in the most humble station, (for his parents were menial servants in the fine country mansion which afterwards was his own,) he had risen to the highest rank in a laborious and useful profession, having become one of the most eminent of the Lancashire solicitors,—a class of practitioners distinguished among those of the kingdom at large by great knowledge of their profession, and admirable skill in the conduct of their clients' affairs. Struggling with all the disadvantages of narrow circumstances, and of an education necessarily restricted, he had not only accomplished himself in the legal walks of his profession, but educated himself in more classical studies, so as to have become a great proficient in pursuits seldom if ever before combined with the practice of an attorney. His taste was cultivated and refined by familiarity with Roman literature, and his mind was still farther enriched by a thorough acquaintance with the monuments of Italian genius. He devoted himself, notwithstanding the constant interruption of his business, to the study of all modern, as well as of Latin poetry; and with the rare exception of Mr. Mathias, it may be affirmed, that no one on this side the Alps has ever been more intimately acquainted with the writers, especially the poets, of modern Italy. The natural ele-

gance of his mind, connected in a great measure with his honest simplicity of character, and the unruffled gentleness of his bland and kindly temper, was soon displayed in some poetical productions, among which his celebrated song on the early progress of the French Revolution acquired the greatest reputation.

"But he united with the exercise of this talent a love of historical research, and an exercise of critical power, which combined with his poetical resources and his knowledge of languages, tended to form in him the most accomplished cultivator of literary history that ever appeared in any age. For although Muratori first, and afterwards Tiraboschi, in Italy, some others in France, and many in Germany, have left monuments of greater research—have thoroughly traced the progress of letters in various ways—have compiled their annals with that industry which can hardly be said to have survived them—and have bequeathed to after ages rich mines wherein to quarry, rather than galleries of finished works to gaze at,—we shall in vain search their numerous volumes for that grace and ease, that mixture of history and anecdote, that interspersed philosophy with narrative, that combination of sagacity in commenting upon characters and events with taste in describing and in judging the productions of the fine arts, which lend such a charm to the *Lives of Lorenzo de Medici and Leo X*; while their interest is still further heightened by the rich vein of the most felicitous poetical translation which runs through the whole of these admirable works, and leaves the less learned reader hardly a right to lament, because it scarcely lets him feel, his ignorance of the original tongues. The sensation caused by the life of the great Prince-Merchant of Tuscany suddenly appearing to enlighten the literary hemisphere, is still remembered by many. It seemed as if a new pleasure had been invented, a new sense discovered. Criticism was dumb; men had only time to be pleased and to be gratified; and at a period when the dignity of the Senate, even of its Lower Chamber, never allowed any allusion to the contemporary productions of the press, a Peer who had twice been minister, and was still a great party chief,<sup>a</sup> begged their Lordships to devote as much time as they might be able to spare from *Lorenzo de Medici*, to the study of an important state affair. By these works Mr. Roscoe not only laid deep and solid foundations of an enduring fame for himself, but founded also a school, in which Dr. Shepherd, author of the *Life of Poggio Bracciolini*, and others have since distinguished themselves, and enriched the republic of letters.

"Although it is by the productions of his pen that Mr. Roscoe's name has been made famous throughout Europe, yet were his merits and his claims to the gratitude of mankind of a more various kind. An ardent

devotion, from pure principle, to the best interest of humanity, was the unvarying and the constant guide of his public conduct, as the most strict discharge of every duty marked each step of his walk in private life. A solicitor in extensive practice, he was the advocate of all sound law reform. An attorney in the Borough Courts, he was the stern uncompromising enemy of chicanery, the fearless defender of the oppressed. A man of business under a wealthy and powerful corporation, he was ever the implacable denouncer of jobs and abuses. A confidential adviser among the aristocracy of the most Tory county in England, he was the most uncompromising enemy of tyranny, the friend of the people, the apostle of even democratic opinions. A leader among the parties who most gained by the war, he was throughout its whole course the zealous preacher of peace; and standing high among the traders of Liverpool, and at the head of its society, he was the unflinching enemy of the African Slave Trade, the enthusiastic advocate of its abolition. When he rose in fame, and thrived in wealth—when he became one of the greatest bankers of the place, and was courted by all the leading men in its society—when his fame was spread over the world, and his native town became known in many remote places, as having given him birth—when he was chosen to represent her in Parliament, and associated with the first statesmen of the age,—this truly excellent person's unaffected modesty, his primitive simplicity of manners, never deserted him. As his rise in life had been rapid and easy, he bore his good fortune with an equal mind; and when the commercial distresses of the country involved his affairs in ruin, the clouds which overcast the evening of his days disturbed not the serenity of his mind; the firmness which could maintain itself against the gales of prosperity, found the storms of adverse fortune, though more boisterous, much louder in their noise, yet not at all deceitful, and really less rude in their shock. His latter years were passed in his much loved literary leisure,—consoled by the kindness of his friends,—happy in the bosom of his amiable family,—universally respected by his countrymen,—by all the wise admired,—beloved by all the good."<sup>b</sup>

#### THE LATE MR. HORNER.

"Mr. Horner having entered public life without any advantage of rank or fortune, had in a very short time raised himself to a high place among the members of the Whig party, (to which he was attached alike from sincere conviction, and from private friendship with its chiefs,) by the effect of a most honourable and virtuous character in private life, a steady adherence to moderate opinions in politics, talents of a very high order, and information at once accurate and extensive upon all subjects connected with state affairs. Not that his studies had been confined to

<sup>a</sup> Marquis of Lansdowne, father of the present Lord.

<sup>b</sup> From Lord Brougham's *Speeches*, Vol. 1, pp. 467—471.

these; for his education, chiefly at Edinburgh, had been most liberal, and had put him in possession of far more knowledge upon the subjects of general philosophy, than falls to the lot of most English statesmen. All the departments of moral science he had cultivated in an especial manner; and he was well grounded in the exacter sciences, although he had not pursued these with the same assiduity. The profession of the law, which he followed, rather disciplined his mind than distracted it from the more attractive and elegant pursuits of literary leisure; and his taste, the guide and controul of eloquence, was manly and chaste, erring on the safer side of fastidiousness. Accordingly, when he joined his party in Parliament, his oratory was of a kind which never failed to produce a very great effect, and he only did not reach the highest place among debaters, because he was cut off prematurely, while steadily advancing upon the former successes of his career. For although in the House of Commons he had never given the reins to his imagination, and had rather confined himself to powerful argument and luminous statement than indulged in declamation, they who knew him, and had heard him in other debates, were aware of his powers as a declaimer, and expected the day which should see him shining in the more ornamental parts of oratory. The great question of the Currency had been thoroughly studied by him at an early period of life, when the writings of Mr. Henry Thornton and Lord King first opened men's eyes to the depreciation which Mr. Pitt's ill-starred policy had occasioned. With the former he had partaken of the doubts by which his work left the question overcast in 1802; the admirable and indeed decisive demonstration of the latter in the next year, entirely removed those doubts; and Mr. Horner, following up the able paper upon the subject, which he had contributed to the *Edinburgh Review* at its first appearance, with a second upon Lord King's work, avowed his conversion, and joined most powerfully with those who asserted that the currency had been depreciated, and the metallic money displaced by the inconvertible Bank paper. In 1810, he moved for that famous Bullion Committee, whose labours left no doubt upon the matter in the minds of any rational person endowed with even a tolerable clearness of understanding; and the two speeches which he made, upon moving his resolutions the year after, may justly be regarded as finished models of eloquence applied to such subjects. The fame which they acquired for him was great, solid, lasting; and though they might be surpassed, they were certainly not eclipsed, by the wonderful resources of close argument, profound knowledge, and brilliant oratory, which Mr. Canning brought to bear upon the question, and of which no one more constantly than Mr. Horner acknowledged the transcendent merits.

"When the subject of the Holy Alliance was brought forward by Mr. Brougham, early in the session of 1816, Mr. Horner, who had

greatly distinguished himself on all the questions connected with what Ministers pleasantly called 'the final settlement of Europe,' during the absence of the former from Parliament, was now found honestly standing by his friend, and almost alone of the regular Whig party declared his belief in the deep-laid conspiracy, which the hypocritical phrases and specious pretences of the Allies were spread out to cover. The part he took upon the debate to which the treaties gave rise, shewed that there was no portion of the famous arrangements made at Vienna, to which he had not sedulously and successfully directed his attention. His speech on that occasion was admitted to be one of the best ever delivered in Parliament; and it was truly refreshing to hear questions of foreign policy, usually discussed with the superficial knowledge, the narrow and confused views to be expected in the productions of ephemeral pens, now treated with a depth of calm reflection, an enlarged perception of relations, and a provident forethought of consequences, only exceeded by the spirit of freedom and justice which animated the whole discourse, and the luminous clearness of statement which made its drift plain to every hearer.

"But this able, accomplished, and excellent person was now approaching the term assigned to his useful and honourable course by the mysterious dispensations under which the world is ruled. A complication of extraordinary maladies soon afterwards precluded all further exertion, and, first confining his attention to the care of his health, before a year was over from the date of his last brilliant display, brought him deeply and universally lamented to an untimely grave.

"*Ostendent terris hunc tantum fata, neque ultra Esse sinent. Nimum vobis Romana propago Visa potens, Superi, propria, hæc si dona fuissent!*"

"When the new writ was moved, on his decease, for the burgh of St. Mawes, which he represented, Lord Morpeth gave a striking sketch of his character. Mr. Canning, Sir S. Romilly, Mr. W. Elliot, and others, joined in the conversation, and Mr. H. Lascelles [now Lord Harewood] observed, with universal assent, that if the form of the proceeding could have admitted of a question being put upon Mr. Horner's merits, there would not have been heard one dissentient voice."

#### EFFECT IN EQUITY OF NOTICE OF INCUMBRANCE.

It being considered that the late case of *Jones v. Jones*, 8 Sim. 633, before his Honor the Vice Chancellor, Hilary Term, 1838, materially affects the doctrine of notice, we propose to draw the attention of the profession to it, with the view of inducing further inquiry. In that case *A.* mortgaged an estate, first to *B.*, secondly to *C.*, and thirdly to *D.*, by virtue of a power reserved to him by his marriage

<sup>c</sup> From Lord Brougham's Speeches, Vol. 1, pp. 643—647.

settlement. *C.* had no notice of the first mortgage; *D.* had notice of the first, but not of the second; and he caused a notice of this mortgage to be indorsed on the settlement, which, together with the title deeds, was in the possession of *B.*; held that *D.* did not thereby gain priority over *C.*

We have invariably understood, in conformity with that decision, that as at law different conveyances of the same property took effect according to their priority in time, that the same principle prevailed in equity in the absence of the legal estate; in fact, that the equitable maxim *Qui prior est tempore potior est jure* always prevailed. We are not, however, aware of any prior decision bearing more closely upon the point than *Frere v. Moore*, 8 Price, 475, in which Lord Chief Baron *Richards* gave full effect to the principle we have adverted to, by expressly deciding that a first mortgagee having only an equitable security, cannot tack a subsequent advance to his first mortgage, though without notice of the mesne incumbrance; and although *Frere v. Moore* was not cited, it was expressly confirmed in *Jones v. Jones*, which is also objected to as subverting the received law of tacking.

We apprehend this objection springs from the notion that the effect of notice by a subsequent to a prior incumbrancer virtually affects the estate, and gives an undue importance to the fact of notice, which merely affects the conscience of the party to whom it is given, without adding the security of the estate to the party giving. This appears from *Peacock v. Burt*, in the appendix to Coote on Mortgages, in which the facts were that Atkinson executed a mortgage in fee to Cade, who in 1814 transferred it with the legal estate to Burcham for securing 7800*l.*; in 1815 Atkinson mortgaged the equity of redemption to Mrs. Smith, for securing 2100*l.*, who thereupon gave notice of her security to Burcham, who, in 1816, advanced 900*l.* to Atkinson, and in 1817 joined with him in conveying to Peacock for security both sums 7800*l.* and 900*l.*, and of 3300*l.* (making 12,000*l.*) advanced by the latter to Atkinson. The estate proving insufficient to pay both incumbrances, the question was whether Peacock was entitled to priority in respect of the whole 12,000*l.*, or whether it was limited to the 7800*l.* due at the time Mrs. Smith gave notice to Burcham of her security, and the present Lord Chancellor, then at the Rolls, expressly decided that Mrs. Smith's notice to Burcham was of no use, and that her security was postponed to Peacock's. How far Burcham may have been answerable over to Mrs. Smith, in respect of the 900*l.*, or the whole, or any other portion of her 2100*l.*, are questions not within the present inquiry, but the correct answering of which, we apprehend, would go far to determine the value of notice to be proportionate to the personal ability and character of the party to whom it is given.

Neither *Jones v. Jones*, nor *Peacock v. Burt*, are opposed to the rule that where the equities are equal the legal estate prevails, but we consider them as important decisions, tending to

remove what we consider to be an erroneous impression of the law of notice; that its operation is as equally effective upon an equity of redemption of real estate, as in the transfer of a chose in action, for the completion of a transfer of which, notice to the legal holder of the fund is absolutely necessary. C. S.

In the *Vice Chancellor's* judgment in *Jones v. Jones*, the following cases are cited: *Beckett v. Cordley*, 1 Bro. C. C. 353, which Lord *Eldon* notices in *Ex parte Cawthorne*, 1 Glyn. & Jam. 240; and in *Martinez v. Cooper*, 2 Russ. 214, Lord *Thurlow* twice decided that where the legal estate was outstanding in a first mortgagee of two subsequent equitable incumbrancers, he who is prior in time must be prior in equity. In the present case, no such question arises as is noticed in *Willoughby v. Willoughby*, 1 T. R. 763—772, or as is noticed in *Evans v. Bicknell*, 6 Ves. 174—183, where Lord *Eldon* alludes to what fell from Mr. J. *Buller*, in *Goodtitle v. Morgan*, 1 T. R. 762; for the third incumbrancer has not got in the legal estate, nor has he any declaration of trust from the holder of it, nor has he possession of the mortgage deeds conveying the legal estate, or of any other of the title deeds. He gave notice of his incumbrance to the first mortgagee. The fact is, that upon Harris's answer, and before the Master as well as in the argument at the bar, the case of Harris was attempted to be put upon the decisions in *Dearle v. Hall*, 3 Russ. 1; *Loveridge v. Cooper*, 3 Russ. 30; and *Foster v. Blackstone*, decided by Sir John *Leach*, and afterwards by the House of Lords. But in each of those cases the subject of discussion was a chose in action. According to what is said by Lord *Lyndhurst*, in *Foster v. Cockerell*, 3 Clark & Fin. 456, moving to affirm the decree in *Foster v. Blackstone*, and according to what is said by the present Lord Chancellor in *Peacock v. Burt*, (p. 607, in Mr. Coote's valuable treatise on Mortgages), one principle established by *Dearle v. Hall*, and *Loveridge v. Cooper*, was, that in order to complete the transfer of a chose in action, notice to the legal holder of the fund is necessary. It is stated by the Lord Chancellor in *Hiern v. Mill*, 13 Ves. 319, "there is a marked distinction between a real estate and a personal chattel; the latter is held by possession, a real estate by title." Ed.

## SUPERIOR COURTS.

### Lord Chancellor's Court.

#### IN LUNACY.—CONDUCT OF COMMITTEE.

*A committee of a lunatic ought, before bringing or defending an action in behalf of a lunatic, to have the sanction of the Court.*

This was a petition presented by the committee of a lunatic, and it prayed a reference to the master to ascertain the amount of costs incurred by the petitioner in respect of certain actions at law, brought by him on behalf of the



lunatic, against one of the lunatic's tenants. The counsel in support of the petition said he had an affidavit stating, among other reasons for this application, that there was not sufficient time to apply and obtain the sanction of the Court to the actions before they were commenced.

The Lord Chancellor expressed his surprise and regret that an affidavit was sworn containing a statement of facts which could not be true. It would be very singular indeed that a party could find time to get up actions, and yet could not, as he alleged, find time to apply to this Court for its sanction. Expenses enough had been already incurred improvidently, without adding to them the further costs of a reference. It might have been easily ascertained that the party against whom the actions were brought, were not worth the costs. The prayer of the petition must be refused, with costs.

*In the matter of* — a Lunatic. Sittings at Lincoln's Inn after Trinity Term 1839.

### Rolls.

#### PRACTICE.—EXCEPTIONS TO BILL.

*The time for answering a bill having expired, and an order having been made for delivery of papers to the defendants for the purpose of their answer, and an application having been made on their behalf to the plaintiff to join in a commission to take their answer, they, instead of answering, filed exceptions to the bill for impertinence: Held, that the exceptions were irregular, and they were ordered to be taken off the file with costs.*

The bill in this case was amended on the 16th of April last, and on the 17th an appearance was put in to it for the defendants, and they, on the 30th of May, obtained an order for the delivery of certain papers for the purpose of their answer. The time for answering expired on the 5th of June, and on the 6th the plaintiff's solicitor received an application from his clerk in Court, who was also clerk in Court for the defendants, for the names of the commissioners on behalf of the plaintiff to take the defendant's answer to the bill, in pursuance of a *dedimus* sued out by them for that purpose. The plaintiff refused to join in the commission, whereupon the defendants, on the 17th of June, filed exceptions to the amended bill for impertinence. The plaintiff now moved that these exceptions be taken off the file for irregularity, with costs.

Mr. Pemberton, and Mr. Beavan in support of the motion. The defendants had submitted to answer the bill by suing out a *dedimus*, and by the application to the plaintiff to name commissioners, and also by obtaining the order for papers to enable them to frame their answer. A defendant, after taking these or any steps in a cause, cannot refer the bill for impertinence. *Ferrar v. Ferrar*; <sup>a</sup> *Anon*; <sup>b</sup> *In re Burton*; <sup>c</sup> *Keeling v. Hoskins*.<sup>d</sup>

<sup>a</sup> 1 Dickens. 170.

<sup>c</sup> 1 Russ. 380.

<sup>b</sup> 2 Ves. sen. 631.

<sup>d</sup> 2 Russ. 319.

Mr. Kindersley and Mr. Rogers opposed the motion. There was no limit to the time for referring a bill for impertinence, until answer put in or an order for time to answer is obtained; no such order was made in this case. The suing out a *dedimus* did not preclude the defendants from referring the bill. And as to the application to join in the commission, that came from the plaintiff's own clerk in court. When the defendants laid a copy of the bill before counsel, with the necessary instructions, he advised them to file exceptions for impertinence, which were filed accordingly without delay. It was immaterial that the time for answering had expired, as the defendants did not apply for an extension of time to answer, and the plaintiff took no step to put them in contempt, they were still entitled to refer for impertinence. They referred to *Nedby v. Nedby*,<sup>e</sup> as an analogous case.

Lord Langdale, M. R.—The question is, whether the exceptions for impertinence ought to remain on the file. The bill was amended on the 16th of April, and seven weeks allowed to put in an answer expired on the 5th of June. The defendants have employed the same person for their clerk in court as the plaintiff has. On the 6th of June that clerk in court writes to the solicitors of the plaintiff, calling upon them to join in a commission to take the defendants' answer. It is said that he did this as the clerk in court of the plaintiff, but I must consider that this step was suggested to him by his duty as the clerk in court of the defendants. After the time for answering had expired, and an intimation had been given that an answer was about to be put in, these exceptions for impertinence were filed. And I think it is not immaterial to notice, that an order was obtained for papers to be taken out of court to prepare the answer. It appears to me that such steps have been taken by the defendants as preclude them from referring the bill for impertinence. The motion, therefore, must be allowed, and the exceptions taken off the file with costs.

*Beavan v. Waterhouse and others*, at the Rolls, June 26th, 1839.

#### TRUSTEES.—THEIR DUTIES AND LIABILITIES.

*One of two executors, without the consent of the other, lent trust money on the security of an estate contracted to be purchased by a testator, whose trustees were directed by him to complete the purchase, one only of these trustees joining in deed, declaring that the estate should be subject to the repayment of the money lent by the executor. Held, that the security was not sufficient, and the executor was ordered to pay the money into Court, with costs of suit.*

William Goodwin died in 1834, having by his will, dated January 1833, given to his wife for her life, the interest of 1000*l.*, a legacy left to him by a deceased brother, and deposited at the date of the will and time of his death, with

<sup>e</sup> 8 Sim. 334.

Mr. Hart, a banker. And he directed, that after his wife's death the said 1000*l.* should be divided between George and Elizabeth Goodwin, his nephew and neice, with an ultimate remainder, in case of their death under age &c., to the testator's next of kin ; and he appointed his wife and one Michael Clewley, his executors, and they proved the will ; and Clewley shortly afterwards took up the said 1000*l.*, and advanced the same, together with 200*l.* more of the money of Mrs. Goodwin, his co-executrix, without her consent, to a Mr. Blair, one of three trustees of a testator of the name of Bainbridge, upon the security of an estate which Bainbridge had, before his death, contracted to purchase from a Mr. Dickens, and which contract he directed his trustees to complete. Several transactions in respect to that estate passed between Hart and Blair and one Orton, who had previously lent Blair 1200*l.* to complete the purchase. It was to pay that sum that Clewley lent the 1000*l.* and 200*l.*, upon the mere security of a deed made between Blair, Hart, and himself, whereby, after reciting among other things, that the rents of the estate had been received by Bainbridge's trustees, and that 1539*l.* had been paid for the estate, of which sum 1200*l.* had been advanced by Orton, and 339*l.* by Blair ; it was declared that the said estate should be held by Hart in trust by sale or mortgage to secure to Clewley the repayment of the 1200*l.* advanced by him, with interest, and subject thereto, to secure to Blair the repayment of the 339*l.* &c. George and Elizabeth Goodwin, the testator Goodwin's said legatees, not approving of the said security, filed their bill by their next friend, against Clewley and Mrs. Goodwin, praying that the said sum of 1000*l.* might be paid into Court, and laid out in proper securities. Clewley by his answer, insisted that the security was sufficient, and said the 1000*l.* could be raised and paid into Court on short notice, &c.

Mr. Pemberton and Mr. Piggott for the plaintiffs submitted that the security was not sufficient. All the trustees of Bainbridge's will ought to have been parties to the declaration of trust, and it ought to appear on the deed that the purchase money was not paid by Bainbridge ; but by Orton, and afterwards by Clewley out of the trust money. Besides, it appeared that the property was not worth more than 1200*l.* altogether.

Mr. Wright for Clewley said, Bainbridge directed his trustees to complete this purchase. It nowhere appeared that they paid the money out of Bainbridge's estate, but it did not appear that Orton advanced 1200*l.*, and that Clewley advanced the 1200*l.* to pay off Orton, and he now stands in Orton's place. There was no evidence that the security was not sufficient. A trustee and executor was not bound to change the securities for his trust money at the mere will of the *cestui qui trust*. No loss has been incurred, and the money can be called in at any time.

Mr. Hall, for Mrs. Goodwin, said she had objected to the security at the time Clewley was advancing the money, and she afterwards

brought an action against him for her own 200*l.* She was under all the circumstances entitled to her costs of this suit.

Lord Langdale, M. R., observed, that though there were two executors, this security was taken by one alone, on an estate belonging to Bainbridge, which had been purchased by him, and the contract for which he directed to be completed by his trustees. These various charges appeared to have been made by Blair alone, without the concurrence of the other trustees of Bainbridge. In the last deed it was expressly stated that in consideration of the sums advanced by Orton and Blair, the conveyance should be on trust by mortgage or sale to raise and secure the repayment of 1200*l.* and interest, to Clewley, and subject thereto upon trust to secure to Blair the sum of 339*l.* ; and it was declared that after payment of these sums and costs, the premises should be conveyed to the use of the trustees under the will of Bainbridge. How was it possible under all the circumstances to conclude that the money paid for the estate was other than money belonging to the estate of Bainbridge. The security was complicated with the accounts of Bainbridge's estate, and it ought not to have been taken by Clewley in his own name. It might be observed that it was proved by Blair that the receipts of Hart should be good and valid discharges. He could not authorise Hart to give receipts without the concurrence of the other trustees. In his Lordship's opinion this was a security which ought not to have been taken. It was said that Clewley acted under the advice of Blair, who was his solicitor but he (Lord Langdale) thought there was no doubt that the money had been advanced by him for the convenience of Blair. The money must be paid into Court by Clewley, and he must also pay the costs of the suit.

*Goodwin v. Clewley*.—Sittings at the Rolls, June 28th, 1839.

#### Queen's Bench.

[Before the Four Judges.]

COPYHOLD.—CHANCERY.—MANDAMUS.

*This Court will not by mandamus compel the lord of a manor to accept the surrender of a person authorised by an order of the Court of Chancery under the provisions of the 11 G. 4 & 1 W. 4, c. 60, to convey an estate where the person having the legal estate is dead or unknown, but will leave the Court of Chancery to carry into full effect its own order.*

*Quære whether this Court has jurisdiction in such a case ?*

*Quære also whether the statute refers to copyhold lands ?*

In this case a rule had been obtained, calling on the defendant, as lord of the manor of Minty, to shew cause why a mandamus should not issue, commanding him to accept the surrender of R. R. Goodricke. The object of the application was, that Goodricke might be enabled to surrender to Sir H. Laurie Bateman, who

claimed to be entitled to the copyhold. The affidavit stated that on the 27th of March, 1835, an order was made by the Court of Chancery, on the petition of Sir H. L. Bateman, to enquire whether John Wade, deceased, was the trustee of the legal estate in the said copyhold. The property was traced to have been in John Wade in fee, and then by certain deeds of 1738 it appeared that John Wade acknowledged that at that time he was entitled in his own right to five-sixths of the property, and that the remaining sixth was in a person named Mary Stork, and that at her death it would vest in the right heirs of one Sarah Stork. A title was then deduced from the said Sarah Stork to Sir H. L. Bateman, who thereupon claimed to be admitted. The affidavits in opposition to the rule set forth that all the proceedings in Chancery took place without the knowledge of the lord of the manor, or any other person claiming title under him to this estate. It appeared that the lord of the manor had enjoyed the estate in personal possession from 1820 to 1833, when he granted it out; and that in 1834 one Robert Gordon claimed to be admitted to the estate, which was also claimed by Sir H. L. Bateman, and upou the same title, namely, that of S. Stork.

Mr. Kelly and Mr. R. V. Richards shewed cause against the rule. The grant of the *mandamus* to admit would be to decide the title to this property. Yet, it is clear that the title is disputed, and other parties, who are claimants to it, are not before this Court; there is no case made out, to justify the interference of this Court. The question depends on the 11 Geo. 4, and 1 W. 4, c. 60, s. 8.<sup>a</sup> The first objection is, that if copyhold estate is within this statute, which is doubtful, then the statute gives to the Court of Chancery the power to obviate the inconvenience arising from the death or absence of the party entitled to convey, and this Court has no power to interfere at all in the matter. It has often been thought, that this Court ought not to interfere by *mandamus*, when the law gives another remedy; but the objection to its interference, is still stronger,

<sup>a</sup> By which it is enacted, "that where any person seised of any land upon any trust, shall be out of the jurisdiction of, or not amenable to the process of the Court of Chancery, or it shall be doubtful, where there are several trustees, which of them was the survivor; or whether the trustee last known to have been seized as aforesaid be living or dead, or if known to be dead, it shall not be known who is his heir; or if any trustee seized as aforesaid, or the heir of any trustee shall neglect or refuse to convey such land, for 28 days next after a proper deed for making such conveyance shall have been tendered for his execution, or by an agent duly authorised by any person entitled to require the same; it shall be lawful for the Court of Chancery to direct any person whom such court may think proper to appoint for that purpose, in the place of the trustee or heir, to convey such land to such person, and in such manner as the said court shall think proper.

when, as in this case, another court is, by the provisions of the statute, seised of the whole authority in the matter. The statute contemplates the case of one person being the undoubted owner, and of the trustee or his heir being dead or not known; and then it gives power to the Court of Chancery to do that which could not be done without this enactment, namely, to put an end to the trust of the unknown heir, and to appoint another trustee in his stead. Sir W. L. Bateman has petitioned the Court of Chancery, and has obtained, as any one representing himself to be the owner of the estate would, an order declaring another person, namely, Goodricke, appointed to convey, but he has suppressed the fact that doubts are entertained as to his equitable title, and has alleged that the legal estate is out in a trustee, and that his heir cannot be found. In the order thus granted by the *Muster of the Rolls*, there is an expression that Goodricke is to convey or surrender the copyhold estate. There is no such word in the statute, and there is great reason to doubt, whether copyholds were intended to be included in the statute. [Mr. Justice Patterson.—The second section which is the interpretation clause, says, that the provisions of the statute "relating to land, shall extend to any manor, messuage, tenement, hereditament, or real property of whatever tenure;" and those relating to conveyances, shall extend to a "surrender."—Lord Denman, C. J.—But the 9th section speaks of leases, and talks of a surrender, so that that word might be satisfied without importing copyhold into the statute b] But still the objection remains, that the act gives certain powers, and for the first time to the Court of Chancery, and that nothing is given to a court of law. [Mr. Justice Littledale.—This Court has not the machinery to carry the statute into effect]. The Court of Chancery does possess power sufficient for such a purpose: it possesses the same power to enforce an order in this matter, which this court possesses to enforce a *mandamus*. In a case therefore, where the title of the person who applies for the *mandamus* is doubtful, where the authority to do what is necessary, is clearly given to another court, and where that court possesses better machinery for carrying its order in the particular case into effect, than is possessed by this Court, the party is bound to make his application elsewhere, and cannot call on this Court for its interference.

Mr. Creswell, and Mr. T. D. Whalley, in support of the rule. The circumstances here shew, that what is asked would be but a proper, and not an unnecessary exercise of the juris-

<sup>b</sup> *Quære*. Is not the word "surrender" in the 9th section merely a word used in default of any other, and as a common expression to signify giving up, and being applied to a lease, must it not have its common acceptation? And must not the word "surrender" in the second section be treated as *vocabulum artis*, and so designate the particular surrender applicable to a copyhold? See Coke's Copyholder, s. 139.

diction of this court to interfere to remedy an inconvenience arising from the impossibility of finding an heir to the trustee. The defendant is not asked to admit, but it is necessary that there should be a surrender before there can be a demand of admittance, and before the question of title can be fairly raised. To prevent that question of title from being properly raised, this preliminary objection is taken. One of the objects of the act is, to effect the transfer of land of copyhold tenure: that can only be done by surrender and admittance. The general expressions employed in the second section, must clearly include copyhold land, for they speak of "all land of whatever tenure." The order here applied for, proceeds on the finding of the Court of Chancery, that a certain state of facts existed. All that is asked is, that the Court of Chancery having appointed a person in the position of a special heir, for the purpose of doing that, which if the real heir had been found, he would have been obliged to do, this Court will compel the lord to give effect to that order. Goodricke is in the situation of heir: the surrenderee will be admitted, but he will take nothing from the lord, "for no interest passeth out of the lord, and these admittances shall never be called in question for the lord's title, because they are judicial acts which every lord is bound to execute."<sup>c</sup> And upon admittance of a stranger after surrender, the lord will have the fine.<sup>d</sup> The 11th section of the statute directs what shall be done upon the prayer of the party entitled, and the 12th section empowers the Lord Chancellor to direct the party claiming to be interested to file a bill. In both sections therefore the proceedings are considered as *ex parte*. There is no limitation as to the applicability of the statute, for the second section applies to cases of all lands of whatever tenure. Copyhold lands must be within such a description. Besides which the legislature, in the subsequent act of the 4 & 5 W. 4, c. 23, passed for the purpose of further extending the operation of this act, has by express terms applied its provisions to copyhold property. All that the statute authorizes to be done in Chancery has been done there, and the party now comes here to carry into full effect the order of the Court of Chancery; this is the more convenient court and will afford him the readiest remedy for the evil of which he complains. The granting of this rule will not prejudice the interests of other parties. The rule now applied for is an ordinary rule and the title of the surrenderee is not before the Court, nor will it be decided by this proceeding; but unless this proceeding is permitted the rights of the party now applying will be in fact adjudicated upon, and the opportunity he seeks for fully establishing those rights, will be denied him. The Judge in Equity has by his order already declared an heir for the purpose of conveying the estate; and all that is now sought is to enforce the order thus made.

<sup>c</sup> Coke's Copyholder, s. 41.    <sup>d</sup> *Id.* s. 56.

Lord Denman, C. J.—This is a motion made to carry into effect an order made under an act of parliament, the 8th section of which requires that when trustees of the real estate are out of the jurisdiction, or are not known to be alive, the Court of Chancery shall appoint persons to convey. It is said that in this case the Court of Chancery has put some person in the situation to convey the property now the subject of discussion, and that this application is to compel a third person to allow the party so appointed to perform the duty for which he was appointed. But the Court of Chancery has the power to direct a conveyance to any person who may be deemed by that Court entitled to the property. Then is not this application at least needless? We then come to the 2d section of the statute, in which it is said (here is Lordship read the section). In the first place, it is contended here, that the words "any tenure whatever" are large enough of themselves to include copyhold lands, and that if not, at least they are explained by the provisions of a subsequent statute to include such lands. It is also said, that the power to take the surrender and direct the admittance arises on this interpretation clause. Suppose all this to be so, still I cannot discover why the Court of Chancery has not the power to direct a surrender and a conveyance; for, if that is the proper mode of dealing with the property, that Court would take care that it should be done. It is not for us to intrude ourselves into an incidental part of a case that is before the Court of Chancery, when that Court has the power to see that all which it thinks right to be done is done. I apprehend that the right for us to interfere is not necessarily given by this statute, and therefore that we ought not to interfere, but ought to leave the matter to that Court which is more competent to do full justice to all the parties who may set up claims to a disputed property.

Mr. Justice Littledale.—It is only of late years that this Court has interfered with lords of manors as to surrenders and admittances. Even so late as *The King v. Rennett*,<sup>e</sup> an application for a *mandamus* to compel the lord of a manor to admit has been refused. It seems to me that the Court of Chancery has an original jurisdiction over all these matters, and in this case it is more proper that that Court should investigate the question, and see what is proper to be done, as it has the power of calling all the parties interested before it—a power which this Court does not possess.

Mr. Justice Patteson.—We are here asked to consider Mr. Goodricke as the heir at law of the person last seised, and to direct that his surrender may be accepted. Unless we so consider him, it is clear that we have no right to interfere. It is only in comparatively mo-

<sup>e</sup> 2 Term Rep. 197. But see *The King v. The Brewers' Company*, 3 Barn. & Cres. 172; *The King v. Wilson*, 10 Barn. & C. 80; and *The King v. The Lord of the Manor of Hexham*, 13 L. O. 43; 2 Har. & Wol. 396.

dern times that this remedy by *mandamus* has been adopted, and even then it has never been exercised to compel the lord to accept a surrender but from the actual tenant on the roll, or from his heir. The heir may surrender before admittance, and the lord be compelled to accept the surrender. The lord would not by that acceptance sustain any injury, for no one could get possession but on the payment of fines. The real heir, if forthcoming, would have to pay them. Now, can we look upon Mr. Goodriche as the heir at law? We cannot in this proceeding see our way on that question. The Court of Chancery could more satisfactorily investigate it. The act does not say that the man who is appointed by that Court shall have the legal estate; but that he may execute a conveyance, which shall be as effectual as if executed by the heir. Unless we are prepared to say that in fact Mr. Goodriche has the legal estate, we cannot interfere. We have not all the parties before us, and cannot come to such a conclusion.

Mr. Justice *Williams* concurred.

Rule discharged.—*The Queen v. J. Pitt*, T. T. 1839. Q. B. F. J.

#### LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

##### Royal Assents

19th July.

Protection against Bankruptcy.  
Borough Court Proceedings.

##### House of Lords.

- To amend the jurisdiction for the Trial of Election Petitions. [In Committee.]
- To amend the Law touching Letters Patent for Inventions. [For second reading.]
- To amend the Law relating to the Custody of Infants. [In Committee.]
- To amend the Law relating to double and treble Costs. [For second reading.]
- To amend the Imprisonment for Debt Act. [In Committee.]
- For the Enfranchisement of Lands of Copyhold and Customary Tenure. [For second reading.]
- To regulate the Proceedings in the Stannary Courts. [For third reading.]
- To regulate the Metropolis Police. [In Select Committee.]
- For registration of Births, &c. [For second reading.]
- To regulate the City Police. [In Committee.]

##### Small Debts Bills for—

Nottingham,	Grantham,
Newark,	Rochdale.
Rotherham,	Eckington,
Aberford,	Glossop.
Hatfield,	Chesterfield,
Warrington,	Worksworth,
Oldham,	Belper.
	[In Committee.]

##### Bills passed.

Tithes Commutation Act Amendment.  
Bills of Exchange. No. 2.  
Turnpike Acts Committee.  
Annual Indemnity.

##### House of Commons.

To regulate and enlarge the Summary Jurisdiction of Justices. Lord John Russell.  
[In Committee.]

Small Debts Court Bills No. 2, for the following places:—

Bury (Lancashire),	Liverpool,
Kingsbridge and	Newton Abbot,
Dodbrooke,	Pontefract,
Leeds,	Tavistock,
Liskeard,	West Ham.

To abolish Grand Juries. Mr. Pryme.

For regulating the High Court of Admiralty.  
[In Committee.]

For the registration of Parliamentary Electors.  
[In Committee.] Mr. Attorney General.

Controverted Elections. Lord Mahon.  
[For 2d reading.]

To alter and amend the Laws relating to Sewers.  
[In Committee.] Mr. Christopher.

For relieving Poor Persons from Rates.  
[For 2d. reading.]

##### Bills passed.

Highways, No. 2.  
The 14 Small Debt Court Bills now in Committee before the House of Lords. See List, *supra*.

##### Bills postponed.

County Courts.  
Small Tenements.  
Registration Court of Appeal.

#### THE EDITOR'S LETTER BOX.

The letter in opposition to the renewed proposal of "Legal Distinctions" at the Examination of Persons applying to be admitted on the Roll of Attorneys, shall be inserted. We think the proposal not so objectionable as it was sometime ago.

We cannot insert the Queries which have been sent us, without the result of some research on the subjects to which they relate.

The names which have been sent us as Masters Extraordinary in Chancery are not published in the London Gazette, from which our list is compiled. We are aware that it is not necessary to the validity of the commission that the names should appear in the Gazette, but we cannot rely on a list which is unauthenticated.

The communications of J. C.; W. C. Jr.; A.; and "Civis," are unavoidably deferred till our next.

# The Legal Observer.

MONTHLY RECORD FOR JULY, 1839.

—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

## FIRST REPORT OF THE REGISTRAR GENERAL OF BIRTHS, DEATHS, AND MARRIAGES.

We extract from this report the following passages regarding the alphabetical indexes to and abstracts of the returns. The indexes will evidently facilitate the search for entries which may be required in the way of *evidence* by practitioners; and the abstracts of the returns furnish important data with reference to the average mortality in the several parts of the kingdom.

“The duties performed under my more immediate direction upon the receipt of the certified copies, after the termination of each quarter at the General Register Office, are, 1st, the examination; 2ndly, the arrangement; 3rdly, the formation of alphabetical indexes; and, 4thly, the compilation of abstracts.

1. After such a preliminary arrangement as shall prevent the confusion and intermixture of papers, each leaf of the certified copies, and each entry thereon, is subjected to a strict examination. If any erasure, interpolation, informality, omission, or error, or defect of any kind, is thereby detected in any entry, it is immediately noted, with a reference to the entry, in a form furnished for that purpose; and all such defects as require explanation, or may at any future time cast doubt on any matter recorded in the register, are made the subjects of immediate inquiry: a letter is addressed to the person who registered the defective entry, and his explanatory reply is preserved in the office ready to be referred to in the event of explanation being deemed requisite at a future period. Defects which do not require explanation, and can lead to no mistake, are also noticed in communication with registrars, in order that such errors may be avoided in future, and that nothing may be wanting which can be effected by the superintendence of a Central Office to render perfect the registration conducted by them. The number of letters addressed to registrars of births and deaths, and of marriages, on the subject of the transmission of the certified copies for the first year, and of circumstances noticed therein on examination of the same, has been 10,831. The number of letters addressed during the same period to clergymen of the Established Church, with reference to

their certified copies, and solely on the subject of such defects therein as required explanation, has been 3221; and I have much pleasure in acknowledging the promptness and courtesy with which (with very few exceptions) the clergymen who have been thus addressed have afforded the explanation required.

“2. After the examination of the certified copies of a quarter of a year, the leaves are arranged, paged, and bound in volumes, for preservation and reference, regard being had in such arrangement to locality, so that entries registered in the same district shall never be far apart, and those which belong to the same county shall, with few exceptions, be found in the same volume. The certified copies for each quarter are kept distinct, as are also those in each quarter of births, of deaths, and of marriages. The certified copies so arranged and bound are kept deposited in fire proof cases.

“3. A separate alphabetical index is made for reference to the births of each quarter, another for the deaths, another for the marriages, being twelve separate indexes for reference to the births, deaths, and marriages of the whole year, containing for the first year of registration, ending June 30, 1838, 958,630 entries. The alphabetical arrangement is that of *surnames*, and it is carried out even to the last letter of each word; and where the same surname recurs often, the alphabetical arrangement has been extended to the name also. The surname to which this arrangement is applied is, in the case of birth, that of the parent; in the case of death that of the deceased person; in the case of marriage, that of each of the parties married. There is thus for marriages a double reference; and an entry in a register is discoverable by turning either to the surname of the man, or to the anti-nuptial surname of the woman. The indexes also contain the name or (in cases of birth or death, if the name be unknown,) the sex. They also contain, in all cases, the name of the superintendent registrar's district, showing thus in what part of the kingdom each entry was registered; and they contain reference to the volume and page. With respect to the mode in which this laborious and extensive work has been performed—a work far exceeding in magnitude any other of a similar kind that has ever been attempted in this kingdom—it will perhaps be sufficient if I briefly state that all the particulars required for insertion in the

index are first transcribed from the certified copies on papers prepared for that purpose; that the transcripts are separated, sorted, arranged in complete alphabetical order, and in that order filed; and that they are then taken off the files, and are carefully copied into the index books in the order in which they had been arranged. Both transcription and indexing are checked so as to render it almost impossible that any error should pass undetected. By means of arrangements, of which the foregoing is a brief outline, the very extensive work which I have before described has been successfully performed.

I need not enlarge upon the advantages derivable from the facilities afforded by such indexes. Obviously desirable as it is, that important records like the certified copies of registers of births, deaths, and marriages, should be placed in one central public repository, the advantage of such accumulation would be comparatively slight if easy reference to any one of the millions of entries, which will be collected in a few years, were not afforded by a systematic arrangement, and a complete method of alphabetical indexing. The immense saving of time, labour, and expense, which is thereby effected, cannot be appreciated by a mere comparison with those cases in which, the place of the register of baptism, burial, or marriage, under the old system, being known and accessible, little trouble was incurred in obtaining a copy of the entry required. But it must be remembered, that cases have occurred, where, the register of a baptism, burial, or marriage, being required for legal purposes, no person living has been able to state in which, of all the parishes in the kingdom, the baptism, burial, or marriage, had been registered, or whether it had been registered at all: the copies deposited with the diocesan registrars, which are only a portion of the whole, afforded no information on the point in question; and a search through more than 10,000 registers has been abandoned as hopeless. In such a case, with no indication but the surname sought, and the probable period of the birth, death, or marriage, the search, which previously was a hopeless task, may, with respect to entries in the new registers, be accomplished in a few minutes.

"4. In framing the general abstracts of the number of marriages and of births, I have not attempted to specify the localities, but have given one statement for the whole kingdom of England and Wales, only distinguishing the number of marriages or of births registered in each quarter of a year. I have not attempted it because I could perceive no advantage derivable at present from such specification. The number of marriages in any one year, is an unsafe element of calculation, in attempting to estimate the amount of population even for the whole kingdom—but utterly unserviceable for such a purpose when applied to portions of the kingdom; for it must be always borne in mind, that among persons married in any given district it will frequently happen that one of the parties is an inhabitant of another district. The number of births, if accurately determined,

is an important basis for calculation; but in this first year of registration, the number of registered births, especially in the two first quarters, falls too much below the estimated actual number to be serviceable in that respect; and as the comparison of the number of births and of deaths in any given portion of the kingdom, can be useful only when both approximate very nearly to the truth, I shall not attempt that which, in this first instance, would tend only to mislead, but which I hope may be exhibited with much advantage in future abstracts.

"In the abstract of marriages for the year ending June 30, 1838, I have shown the number of those solemnized according to the rites and ceremonies of the Established Church, and of all others not so solemnized. I have also attempted, in the case of marriages according to the rites and ceremonies of the Established Church, to show how many had been solemnized by special license, how many by license, how many after publication by banns, and how many on production of the superintendent registrar's certificate; and I have done this to some extent, but the great number of instances in which these circumstances have not been recorded in the marriage register, precludes my doing it fully. I have not, however, on that account abandoned the attempt at this mode of classification, but have exhibited it in its present incompleteness, that by showing the extent to which it has been frustrated, I may perhaps draw thereto the attention of the clergy, and induce those who have not recorded the particulars above mentioned, to register them always in future.

"In the abstract of deaths (the registration of which even for this first year has been effected with signal success) I have entered into more minute details, exhibiting enumerations of the deaths of persons of each sex at every successive year of age. Such details are of acknowledged value, as data for determining the laws of mortality—as bases for calculations materially affecting the interests of millions. Tables exhibiting the proportion of deaths at every successive year of age, are among the most important materials from which are deduced the true principles on which should be founded the systems of life annuities and of life insurance, and the rules of friendly societies established for the use of the poorer classes. The materials hitherto accessible are admitted to have been too limited for framing, satisfactorily, tables to regulate the amount of contribution at various ages, by which members of such societies may become entitled to allowances in old age, or to sums payable at death. The insufficiency of the data hitherto collected, and the contradictory nature of the several tables founded on them, are strongly set forth in the report of the Select Committee of the House of Commons, in 1827, on the laws respecting friendly societies. It is there stated that "according to the Northampton tables, out of 1000 persons existing at the age of 25, there survive at the age of 65, 343 persons. By the Carlisle tables, no fewer than 513 persons will survive;" whereby it appears "that a society which should adopt the Northampton tables

would, if the mortality among its members should correspond with the Carlisle tables, have three annuitants where it calculated upon two. Of those annuitants moreover, a larger proportion would live to enjoy the annuity for a considerable number of years; for instance, of the 343 persons, who would be annuitants according to the Northampton table, 98 would live for 15 years; according to the Carlisle tables 162 persons would survive through that period, and attain the age of 80 years." But still more clearly will it appear how great is the want of further facts for the elucidation of these important subjects, and the establishment of a safe standard by viewing in a tabular form a comparison of the various results of seven approved tables of mortality, which I subjoin in a note extracted from the above-mentioned report. The recommendation of that report, that measures be adopted for making "an accurate and extensive collection of facts," whereby may be facilitated "the solution of all questions depending upon the duration of human life," is at length carried into effect; ample materials, thus conducing to ameliorate the condition of the working classes, are now afforded in the certified copies of registers deposited in the General Register Office; and each year's accumulation will increase the value of such records, by augmenting the number of facts upon which calculation may be brought to bear."

## PARLIAMENTARY PAPERS.

### EXPLANATIONS AND CALCULATIONS ON THE CRIMINAL TABLES FOR 1838.

THOUGH an increase in the number of commitments cannot be received as conclusive proof of an increase of crime, inasmuch as it may arise from a more active and vigilant police, from increased faculties of prosecution, and other causes,—yet it may justly be assumed, that a decrease in the number of commitments, at a time when the police is improved and the means of detection as well as the facilities of prosecution are also improved, may be looked upon as a proof of the decrease of offences.

The Criminal Tables for 1838 show a decrease of 2·2 per cent. in the commitments, as compared with the great increase in the year preceding, but still leave an increase of 5·2 per cent., when compared with the average of the four preceding years, the gross number being,—

In 1834 . 22,451	In 1837 . 23,612
1835 . 20,731	1838 . 23,094
1836 . 20,984	

On a comparison of the two last years, there appears to be a decrease in twenty English and eight Welsh Counties, and an increase in twenty English and four Welsh Counties. In each of the seven English Counties, where the increase was greatest in 1837, there was in the last year a decrease. Middlesex and Surrey were pointed out in the tables of 1837 as the only two English counties in which a continued decrease of commitments had taken place during the

three preceding years. This decrease has continued in Surrey: in Middlesex there is an increase, amounting to 6·56 per cent. Of the great manufacturing and commercial counties, there is a decrease in Lancashire, Yorkshire and Staffordshire; in Warwickshire the numbers are nearly stationary. In the twenty English counties, which have the largest manufacturing and commercial population, there is a decrease in ten of them. In the twenty counties also which have the largest proportional agricultural population the result is the same, namely, a decrease in ten of those counties.

The increase or decrease last year, in each of the six classes of offences, has been as follows, viz.—

1st Class, Offences against the person	Per cent.
	8·1 increase.
2nd „ Offences against property, committed with violence	9·8 „
3rd „ Offences against property, committed without violence	3·3 decrease.
4th „ Malicious offences against property	21·9 „
5th „ Forgery, and offences against the currency	10·3 increase.
6th „ Other offences, not included in the above classes.	24·4 decrease.

It has been shown by the tables of the four years preceding 1838, that, whether the number of offences prosecuted had increased or diminished, there had been a gradual decrease in the portion of offenders charged with offences of violence. This decrease has not continued during the last year,—at least so far as the number of offenders committed may be taken as a just criterion (for it should be remembered that the *punishment* for the worst offences of violence being greatly reduced by the acts of the 1st Vict., it is probable that the lighter descriptions of this class of offences are now proceeded against with more rigour, and indicted under a more severe, but at the same time more correct form, than they would have been had they remained subject to the capital punishment). The truth of this remark will be evident from the punishments inflicted for stabbing, wounding, &c., with intent to maim, nearly one third of which punishments last year were such as persons convicted of common assaults are liable to, though these offences were capital until the passing of the Acts of the 1st Vict. The proportion charged with offences of violence comprised in the two first classes, compared with the total number of offences, was—

	Per. Cent.
In 1834 . 17·44	In 1837 13·21
1835 . 16·25	1838 14·80
1836 . 15·50	

This computation still leaves a decrease of nearly 1 per cent. last year, if the comparison is made with the average of the four preceding years.

It may be generally remarked, that offences chiefly committed by a rural population have decreased,—such as cattle stealing and sheep-stealing in the 3rd class; nearly all the offences of the 5th class, but particularly the maliciously killing and maiming of cattle; and



in the 6th class, the offences against the game laws have decreased nearly 45 per cent.

The year 1838 is the first, over the whole period of which (with an exception that will be pointed out) the acts of the 1st Vict. have been in full operation; and such alterations have been made in the description of the offences, and in the division of the sentences, as were necessary to show clearly the effects which have resulted from the extensive abolition of capital punishments and the reduced severity of the secondary punishments. In the seventy-five heads, under which crimes have been defined in the criminal tables, every offence of probable occurrence is separately shown: of these heads, the offences classed under no less than thirty-one were subject to capital punishment after the passing of the acts of the 7th and 8th Geo. IV., in 1827, for consolidating and amending the criminal laws. In 1832, capital punishment was abolished for cattle-stealing, horse-stealing, sheep-stealing, larceny to the value of 5*l.* in a dwelling-house, coining, and forgery (except of wills and powers of attorney to transfer stock); in 1833, for house-breaking; in 1834, for returning from transportation; in 1836, for sacrilege, and letter-stealing by servants of the Post-office; and in 1837, by the acts of the 1st year of the present reign, for all offences except—

Murder and attempts to murder, when accompanied with injuries dangerous to life;

Rape and carnally abusing girls under ten years of age;

Unnatural offences;

Burglary, when attended with violence to persons;

Robbery, when attended with cutting or wounding;

Arson of dwelling-houses or ships, when the lives of persons therein are endangered;

Piracy, when murder is attempted;

Showing false signals to cause shipwreck;

Setting fire to her Majesty's ships of war;

Riot and feloniously destroying buildings;

Embezzlement by servants of the Bank of England;

High Treason.

These six last offences, from their unfrequent occurrence, have not found heads in the tables, so that of the offences classed under thirty-one heads in the tables, which remained capital till the year 1833, only the six first of the foregoing are now subject to the extreme penalty of the law.

In the following table a comparison is made of the capital sentences and executions in each year, commencing the three last decennial periods:—

OFFENCES.	1818.		1828.		1838.	
	Sentenced to Death.	Executed.	Sentenced to Death.	Executed.	Sentenced to Death.	Executed.
Arson .. .. .	7	3	2	..	1	—
Burglary .. .. .	346	17	171	3	30	—
Cattle stealing .. .. .	27	1	28	—	—	—
Coining .. .. .	..	..	6	2	—	—
Feloniously uttering Counterfeit Coin .. .. .	3	..	4	—	—	—
Forgery .. .. .	86	24	42	4	—	—
Horse Stealing .. .. .	130	1	135	6	—	—
House breaking .. .. .	150	2	353	11	—	—
Larceny, in dwelling-houses, to the value of 40 <i>s.</i> .. .. .	142	4	69	1	—	—
Larceny, privately in shops, to the value of 5 <i>s.</i> .. .. .	41	—	—	—	—	—
Larceny, on Navigable Rivers, to the value of 40 <i>s.</i> .. .. .	2	2	—	—	—	—
Larceny, of Naval Stores, to the value of 20 <i>s.</i> .. .. .	4	—	—	—	—	—
Letter stealing, by servants of the Post-Office .. .. .	..	..	1	—	—	—
Murder .. .. .	13	13	20	18	25	5
Shooting, Stabbing, &c., to murder or maim .. .. .	6	1	20	5	14	1
Rape, and carnally abusing infants .. .. .	2	1	5	3	7	—
Riot and felony .. .. .	..	..	2	..	1	—
Robbery .. .. .	107	13	158	5	35	—
Sacrilege .. .. .	7	..	7	—	—	—
Sheep stealing .. .. .	177	14	122	1	—	—
Sodomy .. .. .	1	1	2	..	3	—
Smugglers — being feloniously armed to assist .. .. .	..	..	11	—	—	—
Transporta—being at large under Sentence .. .. .	3	..	7	—	—	—
Total .. .. .	1,254	97	1,165	59	116	6

In the first of the above periods, in 1818, the criminal proceedings are shown at a time of the greatest severity of the criminal code. Between that year and 1824 (on the recommendation of a committee of the House of Commons) capital punishment was abolished for twenty one offences; but little effect was produced on the numbers sentenced to death or executed, the remission not having reached any of the larger classes of offences, and some of the offences having indeed become obsolete. In 1827, on the passing of the acts for the consolidation and amendment of the criminal law, the only offence in the list of crimes in the tables in which any alteration of the capital punishment was made, was, that the amount of theft constituting larceny in a dwelling-house a capital offence was raised from 40s. to 5*l*. In the next period, therefore, 1828, the criminal procedure is shown after the passing of these laws; and in 1838, the results produced by the abolition of capital punishment in the years 1832, 3, 4, and 5, and by the important changes effected by the acts of the 1st Vict.,—except that sixty two offences, which had been committed before the passing of these acts, were necessarily indicted as capital, though at the time of conviction they were not capital. These offences will be found in the tables under the following heads:—Shooting at, Stabbing, Wounding, &c., 11; Burglary, simple, 27; Robbery, simple, 23; and Riot

and Felony, 1: so that, in fact, the number of capital convictions last year, under the existing laws, were only 54.

Of the six persons executed last year, two were for one offence in Herefordshire; one in Lancashire; one Warwickshire; one in Wiltshire; and one in Staffordshire. The changes in the laws, and their more lenient administration, will be made strikingly apparent, when, in comparison with these numbers, it is stated that in five separate years of the last twenty-five years, the numbers executed have exceeded one hundred, viz.—

In 1813	.	.	.	120
1817	.	.	.	115
1819	.	.	.	108
1820	.	.	.	107
1821	.	.	.	114

The acts of the 1st Vict. have both directly and indirectly caused a great reduction in the severity of the secondary punishments. Of thirteen offences subject to transportation for life, for six of which that punishment was a fixed term, the period has been reduced to a term of transportation not exceeding fifteen years as a maximum, or to imprisonment for any term. The sentences passed during each of the last five years are given in the following table, and the great diminution in the severer sentences in 1838 will show the effects of these changes in the law:—

	1834	1835	1836	1837	1838
Death .. .. .	480	523	494	438	116
Transportation for life .. .. .	864	746	770	636	266
"    15 years .. .. .	..	..	..	66	19
"    14 years .. .. .	668	554	585	479	708
"    10 years .. .. .	..	..	..	179	880
"    7 years .. .. .	2,501	2,325	2,249	2,413	1,862
"    other periods .. .. .	7	4	7	12	—
Imprisonment for 3 years, and above 2 years .. .. .	6	11	1	14	25
"    2 years, and above one year .. .. .	308	290	285	394	393
"    1 year, and above 6 months .. .. .	1,582	1,543	1,455	1,628	1,718
"    6 months, and under .. .. .	8,825	8,071	8,384	10,258	10,262
Whipped, Fined, and Discharged .. .. .	727	651	535	562	532

Comparing the numbers in this table sentenced to death, or to transportation, in 1838, with the average of the four preceeding years, the proportion those numbers bear to the total convicted is as follows:—

	Average. 1834-37	1838
Proportion sentenced to—		
Death . . . . .	1 in 32·3	1 in 145
Transportation generally 1 in 3·7 . . . 1 in 4·5		
for Life . . . . .	1 in 20·7	1 in 63
15 or 14 Years . . . 1 in 26·4 . . . 1 in 23		
under 14 Years . . . 1 in 6·5 . . . 1 in 6·1		

But instead of 1 in 145 being the proportion sentenced to death in 1838, if the number con-

victed last year of offences not capital at the time of conviction (being committed before the abolition of the capital punishment) are excluded from the calculation, the proportion will be reduced to 1 in 311; so that the sentence of death has become ten times less frequent since the acts of 1st Vict. than before. These results will be made more apparent by a comparative detail of the sentences passed upon some of the larger classes of offences committed without violence; but, in making the comparison, reference must be had to the increase or decrease of the total numbers convicted. The four first offences in the following table, on the abolition of the capital punishment, were made subject to transportation for life as a fixed term, and remained so till the passing of

the acts of the 1st Vict. : for the next offence, for life to transportation for fifteen years, as a larceny from the person, the extreme penalty maximum term. The punishments of the was, by these acts, reduced from transportation other four offences remain unchanged.

OFFENCES.		Death.	Executed.	Transported for Life.	Transported above 14 Years.	Transported 14 or 15 Years.	Transported 10 Years.	Transported 7 Years.	Imprisoned above 2 Years.	Imprisoned 2 Yrs. and above 1 Year.	Imprisoned 1 Year and under.	Whipped, Fined, &c.	Total Convicted.
Cattle Stealing ..	1818	27	1	..	..	..	..	..	..	..	..	..	27
	1828	28	..	..	..	..	..	..	..	..	..	..	28
	1838	..	..	2	..	9	9	..	..	3	3	..	26
Horse Stealing ..	1818	130	1	..	..	..	..	..	..	..	..	..	130
	1828	138	7	..	..	..	..	..	..	..	..	..	138
	1838	..	3	6	38	39	..	..	4	17	..	..	107
Sheep Stealing ..	1818	177	14	..	..	..	..	..	..	..	..	..	177
	1828	120	1	..	..	..	..	..	..	..	..	..	120
	1838	..	11	4	93	89	..	..	5	23	..	..	225
Larceny in a dwelling-house ..	1818	142	4	..	..	..	..	..	..	..	..	..	142
	1828	74	2	..	..	..	..	..	..	..	..	..	74
	1838	..	1	1	21	49	2	..	4	41	1	..	120
Larceny from the Person ..	1834	..	66	..	141	..	330	..	6	611	9	..	1,163
	1838	..	4	..	49	281	31	..	22	555	5	..	947
	1834	..	1	..	28	..	111	..	6	504	5	..	655
Larceny by Servants ..	1838	..	..	..	9	7	98	..	11	723	6	..	854
	1834	..	87	..	312	..	1,644	1	86	6,746	83	..	8,959
	1838	..	42	2	150	54	1,479	3	96	8,176	55	..	10,057
Larceny, simple ..	1834	..	2	..	61	..	87	..	21	215	..	..	386
	1838	..	1	..	22	7	60	..	9	234	..	..	333
	1834	..	..	..	7	..	33	..	6	139	1	..	186
Receiving Stolen Goods ..	1838	..	..	..	3	3	16	..	5	182	1	..	210
	1838	..	..	..	..	..	..	..	..	..	..	..	..
Embezzlement ..	1834	..	..	..	..	..	..	..	..	..	..	..	..
	1838	..	..	..	..	..	..	..	..	..	..	..	..

These details show clearly the effects which have resulted from the abolition of the more severe punishments, not only directly as to the particular offences to which the acts of the 1st Vict. relate, but also as to all other offences, the punishment of which has been greatly reduced; and thus a very considerable *indirect* effect has been produced on the general administration of the criminal law. The small proportion of cases in which the maximum of the reduced punishments has been resorted to, —though in many instances the offence is aggravated by a previous conviction of felony, which subjects to transportation for life,—is,

at the same time, a proof that the extensive reduction of punishments by the alteration in the law during the present reign has not exceeded the opinions of those by whom the law is administered. This observation applies with peculiar force to the four first offences in the preceding table which, as before stated, were from 1832 to 1837, subject to the fixed punishment of transportation for life.

In the degrees of instruction or ages of the persons proceeded against last year there has been but little change as compared with the preceding years. A comparison is made in the following tables :

*Centesimal Proportion of Persons of the different Degrees of Instruction.*

	1838	1837	1836
Unable to read and write .. .. .	34.40 ..	35.85 ..	33.52
Able to read and write imperfectly	53.41 ..	52.08 ..	52.33
Able to read and write well . . .	9.77 ..	9.46 ..	10.56
Instruction superior to reading and writing well . .	0.34 ..	0.43 ..	0.91
Instruction could not be ascertained	2.08 ..	2.18 ..	2.68

*Centesimal Proportion of Persons of the different Ages.*

	1838	1837	1836
Aged—			
12 years and under .	1.58 ..	1.52 ..	1.84
16 yrs. and above 12	9.92 ..	9.72 ..	9.71
21 years ..	16.29 ..	13.29 ..	29.03
30 years ..	21.31 ..	24.31 ..	31.42
40 years ..	30.14 ..	37.14 ..	44.56
50 years ..	40.70 ..	46.65 ..	56.76
60 years ..	50.30 ..	53.32 ..	63.33
above 60 years . .	1.58 ..	1.55 ..	1.40
unknown . . . . .	1.78 ..	1.79 ..	2.08

*Secretary of State's Office, Whitehall,  
10th May, 1839.*

PARLIAMENTARY RETURNS.—KING'S INNS (DUBLIN.)

Returns to an Order of the Honourable the House of Commons, dated 30 May 1839 *—for*,  
 A RETURN of the Amount of all Monies received by the Honourable Society of the King's Inns in *Dublin*, in each year since the 7th day of February 1832, from Students at Law, with a Statement of the manner in which the same has been expended; similar Account of all Sums received by the said Society on the Admission of Barristers, with a Statement of the Expenditure of the same; similar Account of all Sums received from Attorneys' Apprentices; similar Account of all Sums received on the Admission of Attorneys; similar Return of all Sums received by the said Society from the Stamp Office, being a portion of the Stamp Duty received on Attorneys' Indentures, with a similar Statement of the manner of their expenditure:—and, a Return of the annual Expenditure of the Honourable Society of the King's Inns, in *Dublin*, for each year since the 7th day of February 1832.

A Return of all Monies received by the Honourable Society of the King's Inns in *Dublin*, in each year since the 7th of February 1832, from Students at Law; similar Account of all Monies received on the Admission of Barristers; similar Account of all Sums received from Attorneys' Apprentices; similar Account of all Sums received on the Admission of Attorneys; and, a similar Return of all Sums received from the Stamp Office, being a portion of the Stamp Duty received on Attorneys' Indentures, to the end of Easter Term, 1839.

	Easter 1832.		1833.		1834.		1835.		1836.		1837.		1838.		1839.												
Students	.	.	£1,041	1	4	£1,773	1	4	£1,561	12	0	£1,968	5	4	£2,098	8	0	£1,484	5	4	£1,577	17	4	£553	1	6	
Barristers	.	.	.	.	.	1,021	1	3	1,712	15	0	1,910	7	6	1,830	12	6	1,834	10	0	3,194	18	9	1,515	7	6	
Apprentices	.	.	.	.	.	565	7	8	765	0	10	800	12	6	613	16	3	573	15	7½	676	1	8	351	7	1	
Attorneys	.	.	.	.	.	922	3	0	1,302	0	0	1,410	10	0	1,505	8	9	1,369	16	3	1,803	16	3	895	2	6	
Stamp Duty on Attorneys' Indentures	554	0	0	2,390	0	0	2,450	0	0	2,170	0	0	2,056	0	0	1,652	0	0	2,114	0	0	910	0	0	910	0	0

A Return of the Annual Expenditure of the Honourable Society of the King's Inns in each year since the 7th day of February 1832, to the end of Easter Term 1839, which consists of the following heads of Disbursement; viz, Rent, Taxes and Minister's Money, Library, Printing, &c., Officers' Salaries, Tipstafs for the Public Four Courts, Charity, Invalids, Pensions to old Servants, and every Expense connected with the Housekeeping, and the Society's Establishment, as set forth in the following Table, marked No. 1.

A Return of the Annual Expenditure of the Honourable Society of the King's Inns in each year since the 7th day of February 1832, to the end of Easter Term 1839, which consists of the following heads of Disbursement; viz, Rent, Taxes and Minister's Money, Library, Painting, &c., Officers' Salaries, Tipstiffs for the Public Four Courts, Charity, Invalids, Pensions to old Servants, and every Expense connected with the Housekeeping, and the Society's Establishment, as set forth in the following Table, marked No. 1.

ORDINARY EXPENDITURE.—No. 1.															
Easter 1832.		1833.		1834.		1835.		1836.		1837.		1838.		1839.	
£5,754	2 7½	£6,319	10 2	£5,608	6 11½	£7,191	0 3½	£6,749	17 6	£7,191	1 6	£6,049	11 10½	£3,382	7 11

ORDINARY EXPENDITURE.—No. 1.

EXTRAORDINARY EXPENDITURE, IN BUILDING, &c.  
 The following Sums, amounting in all to 37,235*l.* 8*s.* 9*d.*, have been expended (as set forth in the Table marked No. 2), for purchasing premises adjoining the Four Courts; for insulating the Courts of Justice and Public Record Offices adjoining them, in order to protect the various Records and public Documents therein deposited from the hazards of Fire, to which they were continually exposed; and in erecting new Buildings (now nearly completed), which embrace a spacious and commodious Law Library for the immediate use of Members of the Bar; Arbitration Rooms, and Rooms for the accommodation of the Attorneys, pursuant to their suggestions to Mr. Owen, the Government Architect, according to whose plan and under whose superintendence all the works have been carried on.

—No. 2.—

	1833.		1834.		1835.		1836.		1837.		1838.		1839.					
King's Inns Society, 20 June 1839.	£500	0	0	£13,030	14	2	£3,429	9	3	£14,000	0	0	£454	14	3	£1,551	11	1
CONWAY E. DONNE, Under Treasurer.																		

<sup>a</sup> Why should not a similar return of duty on the stamps of attorneys' articles be made in England towards the expenses of the Library and Lectures established for the use of that branch of the profession? The heavy stamp duty, it was supposed, would increase the respectability of the profession: a library and lectures are essential for the same purpose. *Ed.*

## STOCKDALE v. HANSARD.

RETURN to an Order of the Honourable the House of Commons, dated 1 July 1839;—*for*, a Return, in detail and columns, of the whole expenses incurred in the Trial of Stockdale v. Hansard, with the Names of the recipients of each Sum, and the sum total expended, and to be paid by the public—(so far as regards the expenses incurred and paid by Messrs. *Hansard*.)

To solicitors' bill for services performed and expenses incurred in the defence of the first action (commenced 15th October 1836; determined Hilary Term 1837.) [Recipients, Messrs. Parkes and Preston, Great George Street] . . . £184 12 0

To solicitors' bill for services performed and expenses incurred in the partial preparation for the defence of the second action (commenced 18th May 1837; determined Trinity Term 1839.) [Recipients Messrs. Parkes and Preston, Great George Street] . . . 21 6 4

*Mem.*—The defence of the second action was transferred to the Solicitor of the Treasury.]

To the Sheriff's demand for damages and costs awarded by the judgment given on the trial of the second action. [Recipient Mr. Burchell, Red Lion Square] . . . 390 14 0

Total Expense incurred and paid by Messrs. Hansard . . . 596 12 4

JAMES, LUKE G. & LUKE J. HANSARD.

Printing Office, 9 July 1839.

A Return, in detail and columns, of the whole expenses incurred in the trial of Stockdale v. Hansard, with the names of the recipients of each sum, and the sum total expended, and to be paid by the public;—(so far as regards the office of the Solicitor for the affairs of Her Majesty's Treasury.)

The Attorney General . . .	£354 18 0
His Clerk . . .	10 10 0
The Solicitor General . . .	43 1 0
His Clerk . . .	2 0 0
Sir Frederick Pollock . . .	51 9 0
His Clerk . . .	2 10 0
Sir W. W. Follett . . .	43 1 0
His Clerk . . .	2 0 0
Mr. Wightman . . .	43 1 0
His Clerk . . .	2 10 0
Mr. Gurney, Short-hand Writer . . .	93 4 8
Mr. Cox, a Witness . . .	1 1 0
Mr. Hill - ditto . . .	1 1 0
Mr. Cope - ditto . . .	1 1 0
Mr. Northcroft, Law Stationer . . .	11 12 6
Messrs. Vacher - ditto . . .	0 11 0
Court Fees . . .	3 10 0
Mr. Howard, Plaintiff's Attorney . . .	0 13 4
Letters, messengers and coach-hire . . .	1 17 0
Total . . .	£669 11 6

8 July 1839.

GEO. MAULE.

ADVENTURES OF AN ATTORNEY  
IN SEARCH OF PRACTICE.

## EXTRA COSTS.

We lately noticed a work of the above title, (see p. 197, *ante*.) and now extract the following, on the important subject of *extra costs*.

"One axiom on the question of costs is so obviously true, that we cannot avoid surprise at our clients so often losing sight of it. If they wish only to pay their attorney like a shoe-black, they will soon have only shoe-blacks for their attorneys. No man can limit himself as to the extent of costs, without cramping his exertions to a degree that may prove highly injurious to his client's interests. The casualties and accidents of litigation are so frequent, and sometimes so expensive, that they occasion more expenditure than even the whole of the proceedings that go on in the accustomed course; and if the cause of action is not of sufficient importance to warrant costs out of the ordinary routine, if necessary, it is wiser and more honest to advise the client to submit to his loss. This maxim must be received *cum grano*, certainly; but in cases where character is not involved, or rights ultra the subject-matter of the litigation, it is invariably true. In ordinary actions to recover debts, or damages for pecuniary injury, the expense resolves itself into mere matter of arithmetical calculation; such actions, however, form by no means the staple commodity in the business of an eminent attorney. A curious instance of this accidental expenditure to a small extent, once occurred to myself.

I was engaged in a cause at the assizes about fifty miles from London. It stood first in the paper for the day following my arrival. I had travelled from town in a post chaise with two of my witnesses, one of whom was a surveyor of eminence, who had been subpoenaed to produce his report of certain dilapidations. This gentleman was one of the convivial corps, remarkably corpulent, jolly and good humoured. On arriving at the assize town about seven o'clock in the evening, I placed him in the post that he had been anxiously coveting for some three or four hours previously,—at a table ensconced in a snug box in the coffee room, with his favourite dish before him, a bottle of the best port, and such a fire by his side as one views with pleasure in a raw, cold evening in March. He had been up with me all the preceding night, discussing evidence. I now told him to discuss his steak, make himself comfortable, and go to bed, while I attended the consultation. Mr. Baron Gurney was my counsel; a man that no flaw in evidence could escape.

"Has Mr. Gubble been served with a *duces tecum*, Mr. Sharp?"

"Yes, Sir."

"Where is his report?"

"Here Sir." (*producing it*.)

"This!" said Gurney. "This can never be the original: it is too neat and methodical. Where are the memorandums from which he prepared it?"

It had quite escaped me to ask for them; yet it was obvious that the non-production of them would seem suspicious, and insure the rejection of the copy as evidence. I hastily returned to Gubble, and found him wrapt in full enjoyment: the cloth removed; the bottle but half exhausted."

After much difficulty the witness is dispatched to London—

"A chaise and four was already at the door; poor Gubble's great coat and boots safely deposited within it, with an extra blanket, and a second bottle to keep him warm. We bundled and heaved him into the chaise, half by persuasion, and half by force, and cautioned the boy not to let him out for the first two stages; trusting to his fears and his good sense to do the rest, when he was sufficiently awake to reflect on it. We reckoned rightly. He was back by ten the next morning; entered the court as we were called on, unshaved, undressed, but elated with the thought of his activity; produced his pocket-book, and saved the cause, though at an accidental cost of some five-and-twenty pounds. The fault, however, was not mine; for I had cautioned him by letter, as I always do on such occasions, to bring with him every scrap of paper that he possessed, and he told me that he had done so.

These accidental "aggravations of expense" (it is the best term I can invent for them), are not uncommon, after bestowing the utmost care that foresight can suggest. A very similar instance has occurred to my recollection while writing the preceding one. It happened to me during my clerkship, and is the more instructive, because it shows that even the discretion of a clerk must sometimes be largely exercised on the necessity of incurring extra costs. I had been intrusted with the management of a very important case, involving the interest of a great commercial body, as well as the personal character of some of its members holding high rank in the city. In this, as in many cases, I dare not be more particular. It was deemed of such consequence to obtain a verdict, that the witness on whose testimony we principally relied, had been maintained in seclusion at a country place two hundred miles from London, for nearly two years, at an expense of 150*l.* per annum, till the case was ripe for trial. All this time he was vigilantly watched, unknown to himself. I dared not bring him to town till the day but one before the trial; but that was time enough for mischief: he threw himself in the way of one of the defendants, and the next morning he was on his road to Calais. As soon as I found that he was missing, I reported the matter to Mr. Gurney, who on this occasion also was the leading counsel. It was one of the many qualities of this distinguished advocate, that he was not only in *utrumque*, but in *quodcumque paratus*. I was almost desperate with disappointment; but while he felt the embarrassment, he at once suggested the remedy. The fellow-clerk of the rascal that had absconded was almost equally familiar with the facts we wished to prove, but, as we feared, still less trustworthy.

"It's bad enough, Mr. Sharpe, bad enough, certainly; but it can't be helped; subpoena White."

Away I started to subpoena Mr. White; it was still early in the day. This young man was engaged in the counting-house of some merchants in the city; people in large business. I rang the bell, and was answered by one of the clerks. "Is Mr. White within?" "I will inquire, Sir." I waited nearly five minutes; and thinking that so simple a question might have received a more speedy answer, I determined to follow him into the counting-house. It was divided by railing into compounds. I walked up to the railing of the nearest desk. "Is Mr. White within?"

"No, Sir."

"When do you expect him?"

"It is very uncertain."

"Where does he live?"

"At Walworth."

"The street."

"I don't know, Sir."

During this parley I kept my eyes about me, and observed that several of the clerks bent their heads over their desks, while two or three were obviously restraining laughter with some difficulty. I affected to be considering what I should do, while in reality I was counting the clerks, and comparing their numbers with the hats which I saw hung up against the wall. There was a hat too many, and a vacant desk. "So ho!" thought I, to myself, "the seat is still warm;" for I was an old sportsman, while yet a very young man; "the game can't be very far off," and then without more ceremony, I opened the door of the compound, and seating myself on the vacant stool, said I would leave a note for him. I found the keys in the lock,—an additional proof that my suspicions were correct. Under pretence of looking for some paper, on which to write my note, I opened the desk; found in it, after tumbling over some loose papers, a letter with his address at Walworth; and then, saying that I had changed my mind as to writing, and would call again in the evening, I quitted the house. I lost no time in sending off a messenger express to Dover, with a copy of the subpoena, and a description of his person, while I started myself for Walworth, and arrived just ten minutes after he had left it in a chaise for Dartford! His servant or his wife, whichever it might be, thinking him safely off, honestly confessed that he had absconded to avoid service of the subpoena, having long expected it: he was actually in the counting-house, when I had called there: the clerk, who opened the door to me, detected my business by a piece of red tape hanging out of my pocket: and whilst I was catechising the others as to his residence, he had escaped by another door, run-home to get another hat, and bolted. But I was prepared: I had post horses waiting for me a hundred yards off; got first to Dartford; subpoenaed him as he drove into the yard; brought him hack in the same chaise; and by his evidence, obtained a verdict the next day, but certainly at no slight additional costs, in the shape of travelling expenses!

The casualties of litigation are so numerous and diversified, that it is utterly impossible, unless in the simplest manner, to foretell the expenses. The recent reforms in pleading, by compelling a disclosure of the real defence, have reduced, but not superseded the speculative guesses of the attorney: indeed, in one respect, they have added to the difficulty; because by success on one issue, and failure on another, a debtor and creditor account of costs is established, the balance of which may by possibility, be against a plaintiff, though he has been successful on the general merits. It is a very pleasant thing, no doubt, to have to tell your client, "Oh yes, Sir! we have succeeded for you; but instead of receiving costs you will have forty or fifty pounds to pay to your opponent." Independently of this, a hundred accidents may occur, all tending to multiply costs. A witness may be ill, and the record must be withdrawn; a bill for discovery may be advised; an injunction may be obtained by the defendant; a cross action may be brought; indispensable witnesses may have made a trip to Naples or New York, and must be examined on interrogatories: in a word, so many deviations may, and generally do occur, that no prudent solicitor will ever insure his client against the amount of costs, unless in the most general, and therefore the most unsatisfactory way. The right answer is, "If costs are an object, settle your quarrel out of court, as best you may;" and to clients themselves, I may observe, that if an attorney is disposed to be dishonest, no skill can avail them against overcharges; for his charges may be individually reasonable, and even low, but so needlessly frequent, as to make the sum total of his bill nothing less than fraudulent, though none but a brother-attorney can detect the fraud. It is often the case with mean and illiberal clients, that they submit their attorney's bill to another practitioner, unknown to him. Every solicitor should be prepared for this; for I have known too many instances, where to curry favour with a new acquaintance, or to acquire on easy terms a credit for moderation, an attorney has pronounced severe and mischievous judgment on the costs of his respectable neighbour, though all in the profession would rightly consign the critic himself to the shades of Newgate, as an incorrigible thief.

How my unprofessional readers will stare, (if I chance to find any), when I remark that one of the most difficult problems that an attorney has to solve, is to what extent he may properly make any charge at all! Yet I rejoice to say, for it is to the credit of my profession, that with the respectable members of it, this is frequently a perplexing question. It occurs in many ways: the most common is this:—an old and valuable client becomes acquainted with a case of great hardship, and perhaps oppression, involving legal points; he calls on his attorney, and avowedly on benevolent impulse, asks his opinion; the opinion involves, as a matter of course, inquiry into fact and evidence, for very few clients understand the

value of the one, or detail the other with accuracy; the sufferer is sent to explain his grievance: it admits of redress; the client liberally offers to indemnify against disbursements; the attorney can do no less than waive profits; and thus a suit is begun gratuitously, partly from charitable feeling, yet more from anxiety to oblige a client, and time and labour are soon bestowed to a most inconvenient extent. In a simple case like this, there is no help for it; matters must proceed to an end in the usual routine, and compensation must be found in conscience; but this simple case admits of many variations, and then the difficulty begins. The client may go no further than just asking an opinion; the opinion is, on the whole, favourable; the injured pauper is not poor enough to claim a pauper's privilege; if you desert him, you offend your client, who, ignorant of the expence, as well as trouble that the offer implies, expects you will spontaneously take up the case; partial success follows; a wrong-headed jury,—and nineteen out of twenty are wrong-headed,—give ten pounds damages for a broken leg, when they would not have their own gouty toes trod upon for fifty; some thirty more are recovered for taxed costs, and (the case has occurred to myself) after receiving these "*party and party*" allowances, you remain more than twenty out of pocket. You may gain a verdict for your pauper client, and swallow up all the fruits of his triumph, even to repay extra costs out of pocket! Reason and equity would say in such a case, that the attorney is excusable for pocketing the damages, as well as costs; yet character and interest forbid it. It is a hard case; but the attorney must relinquish all, though successful; and to retain the character of a gentleman, must abandon, not only remuneration, but bare indemnity. The most annoying of all causes that a man can undertake, is where he recovers damages, moderate or temperate damages, as they are called, that is to say, fifty pounds for the loss of an eye, or thirty for the crippling of a limb, for a humble client thrust upon him by a wealthy patron, or adopted out of christian charity! How often have I known jurymen vaunt with self complacency, of their justice, when some poor devil has obtained from this same justice, just enough to pay his surgeon's bill, after having been disabled for life by a drunken coachman, or a larking dandy; while the attorney, who has brought the action from mere compassion, has had the pleasure of bearing himself branded by counsel, as a wretch prowling about the streets for quarrels, and obtains for his benevolence, taxed costs that will just pay for coach hire and a blue bag to take his papers home! I lament to add that I never heard of counsel relinquishing fees for a successful pauper; though I have known many in which the attorney of that pauper has been left to pay such fees out of his own pocket.

There are other instances, where even among the wealthy, good feeling prohibits an attorney from asking costs. As a general rule, it may be laid down that they never should be

taken from a charity purse. The retainer may be refused: but if accepted, nothing can be claimed, but money actually expended. Sometimes, however, yet greater liberality should be shewn. It once fell to my lot to be consulted by a poor clergyman, who enjoyed a small benefice in the country. In the plenitude of Christian good-nature, he had become security to the extent of £1000, for the good conduct of a worthless relative, whose only chance of reform appeared to be in accepting a situation of some pecuniary trust, which his friends had procured for him. I never knew a case in which such good offices worked out the object for which they were intended; and so it happened here: the rascal became possessed of a considerable sum, far exceeding the penalty of the bond, and absconded. My client was immediately required to indemnify the employers. He was conscious of no defence, and utterly destitute of all means of satisfying the demand, except by mortgaging his living. His self-reproaches, for forgetting what was due to his wife and infant family, in entering into such a bond, not unmingled with painful misgivings whether he had acted honestly even toward his opponents, in giving an indemnity that he found he could not satisfy, were enough to touch a miser's heart. I offered my assistance, but here again the good man hesitated, because "he could not pay me." I re-assured him on this point by declining payment, on the principle that professional aid was all I had it in my power to give in too many cases where I ought to be more liberal, and therefore I made a compromise with my conscience at times, by sacrificing six and eight-pence, and debiting charity with the amount. He smiled at my quaint morality in book-keeping, and allowed me to investigate his case; the rather, because there was too much reason to fear that my trouble would only extend to a little negotiation for indulgence. I was too much interested in his case to be niggardly in my exertions, and by dint of close enquiry, I learned that the money which the man had embezzled, was private money, not belonging to his employers collectively, but intrusted to his charge by one of them on his separate account. I had extreme difficulty in obtaining evidence of this; but eventually I succeeded, and defeated the claim, or rather compromised it on terms of abandoning all costs. They amounted to nearly a hundred pounds. Meanwhile, my revered friend became exposed to further difficulty by having the young family of a brother thrown upon his hands, by that brother's premature decease. Could a Solicitor, under such circumstances, call on him for costs? or ought he to have withheld his aid? I cannot answer these questions for others; but I know many of my profession who would have followed the same course as myself. Many similar instances could be given; but I have said enough on the subject. I will only add, that it is prudent to relinquish costs altogether, or to charge the usual and reasonable fees. I never once knew a client that gave one credit for a compromise."

## ANNUAL MEETING OF THE INCORPORATED LAW SOCIETY.

At the Annual General Meeting of the Members of the Society, held in the Hall, Tuesday, June 26, 1839; Iltid Nicholl, Esq., in the Chair; the Report of the Committee of Management (of which the following are the principal parts) was read by the Secretary:—

According to annual custom, the Committee of Management have now to submit to the Society the result of their labours during the past year.

Since the last General Meeting the Committee have taken into their consideration several *Bills before Parliament relating to the Law*,—particularly the County Courts Bill; the Copyholds Enfranchisement Bill; and the Bill for the Protection of Purchasers against Judgments, Crown Debts, and other Incumbrances. The County Courts Bill, which more immediately concerns the profession, is now before a Select Committee of the House of Commons; but it is understood will not be passed during the present session. The Copyholds Enfranchisement Bill stands for a third reading in the House of Commons,\* and the Bill for the Protection of Purchasers against Judgments has received the Royal Assent.

A communication having been made that the Master of the Rolls was willing to receive suggestions for the *consolidation and amendment of the statutes relating to attorneys and solicitors*, the Committee have availed themselves of the opportunity to point out several grievances of the profession; and a statement of the heads of the existing statutes, and the outline of a proposed Bill for consolidating and amending them, have been prepared by the Committee.

Repeated complaints having been made of the uncertainty of the practice relating to the *retainers of counsel*, the Committee have proceeded to inquire into and ascertain by what means the inconvenience might be remedied; and a circular has been addressed to all the London Members of the Society, requesting them to favour the Committee with any information connected with the subject.

In answer to this circular, the Committee have received communications from several members. The information contained therein has been digested and arranged, and the Committee have collected several cases and opinions on various points; but much further information is still necessary, and the Committee will be glad to receive any communications from the members of the Society which may assist their object, and enable them to make a satisfactory report.

The question of *gratuities to the Clerks of Counsel* practising in Equity, who still persist in claiming a per-centage on fees, has con-

\* This bill has since passed the House of Commons.



tinned to engage the attention of the Committee; and a deputation having attended the Vice Chancellor, by appointment, in consequence of a memorial from the Society, the Committee have been informed that the subject has been taken into consideration, and that the scale adopted in the Common Law Courts will be referred to the Masters in Chancery.

A suggestion having been submitted to the Committee with a view to an *alteration of the hours for serving notices*, rules, and other proceedings, the Committee, after mature consideration, were of opinion that there would be found so much practical difficulty in effecting the desired object, that it was not expedient to prefer an application for the purpose to the Judges.

The old scale of allowance of *costs on the Crown Side of the Court of Queen's Bench* being still adhered to by the taxing officers, although on the plea side the masters have been for some time past authorised to make allowances on taxation considerably beyond what had formerly been made, and particularly on the taxation between party and party, the Committee presented a memorial to the Judges, submitting that there should not be any difference between the Plea and the Crown Side of the Court in the taxation of costs; and they have reason to believe that the practice of the latter will be assimilated to that of the former.

The Committee have given their best attention to several complaints which they have received of the *malpractice of certain attorneys*; and one of the cases is now before the Court of Queen's Bench for its decision.

The Committee have also attended to all applications for *re-admission*, and they have felt it their duty in three instances to oppose the parties applying; in all of which the Courts have concurred in the propriety of the objections, and refused the applications.

The Committee have derived much assistance on both of these subjects from their communications with the Provincial Law Societies, with whom they have also continued to correspond on various other matters.

The course of proceeding in the *examination of Articled Clerks* has continued as heretofore. The number examined in the year 1838 was 465; of whom 445 were passed, and 20 postponed.

At the last Annual Meeting the Committee reported the result of the proceedings taken by them to obtain *Rooms at Westminster* for the accommodation of solicitors attending the Courts and Houses of Parliament. The Committee have since presented a further memorial to the Lords of the Treasury on the subject; and a deputation attended, by appointment, at the Treasury, and further explained the nature of the accommodation required and its urgent necessity,—soon after which the following letter was received:—

“Treasury Chambers,  
“20th September, 1838.

“Sir,  
“Having laid before the Lords Commis-

sioners of Her Majesty's Treasury the memorial of the Incorporated Law Society, transmitted with your letter of the 18th of July last, wherein they renew their application to be provided with accommodation in the buildings connected with the new Houses of Parliament, I am commanded by their Lordships to acquaint you, for the information of the Society, that my Lords would by no means feel justified in sanctioning the slightest alteration in the plan or arrangement made which the building is to be erected for the accommodation of the two Houses of Parliament, upon the specific recommendation of the Committees of both Houses, appointed specially for the consideration of that subject, by any authority or direction of this Board, and cannot, therefore, undertake to make any such appropriation as that prayed for; *although it will be competent to the parties to renew their application at a future period, when the building has been erected*, in order that they may then learn whether any facilities can be afforded for the legal profession, attending the Houses of Parliament and Courts of Law, beyond that which they now possess; upon which points, however, my Lords can give them no assurance whatever.

“I am, Sir,

“Your obedient Servant,

“A. Y. SPEARMAN.

“THOS. ADLINGTON, Esq.  
Chairman of the Committee of Management  
of the Incorporated Law Society.”

The Committee propose to act at the proper time upon the suggestion contained in this letter, and on the renewal of their application they cannot but hope that an object so important, alike to the public and to the profession, will be attained.

The Committee have pleasure in reporting that the arrangements with regard to a *room adjoining Serjeants' Inn Hall*, which were mentioned in the last Report, have been carried into effect, and that the room is now open for the use of the Members during the Sittings of the Court in the Hall.

On the suggestion of several Members of the Society, the Committee proposed to the *Lecturers* of the last season to introduce into their courses, the subjects of Bankruptcy and Criminal Law, in order to assist the applicants for admission on their examination, and this suggestion was adopted.

The Subscribers to the Lectures for the past year consisted of 200 Articled Clerks of Members, and 29 other subscribers.

Several valuable *Donations of Books* have been made since the last Meeting, and a considerable sum has been expended in the purchase of additional works. The Library now consists of 5210 Volumes, exclusive of Parliamentary Papers.

The Committee have also commenced a *Collection of Ancient Documents and Papers* relating to the Law, to which they invite the contribution of Members.

Some of the early numbers of the London

Gazette are still wanting to complete that work.<sup>a</sup>

The *purchase* of three houses in Chancery Lane, the contract for which was mentioned in the last Report, has been completed, and the Society is in receipt of the present rents; at the expiration of a short term, an improved rent will become payable until it shall be determined to enlarge and extend the building.

The *Receipts* and *Payments* for the past year will appear by the Auditors' accounts.

There have been 59 New Members approved since the last Annual Meeting.

The Committee have to notify with much regret the decease of Mr. *Hall*, whose attendance at the Committee Meetings, and general attention to the affairs of the Society, were unremitting. The vacancy in the Committee of Management thus occasioned it is part of the business of the General Meeting to supply.

(Signed) ILTID NICHOLL,  
Chairman.

The following amongst other Resolutions were passed at the Annual General Meeting.

Resolved that the Report of the Committee of Management be received, and entered on the Minutes.

Resolved, that the thanks of the Meeting be offered to the *Chairman* and to the *Committee of Management*, for their constant attention to the interests of the Society, and their valuable exertions in its behalf during the past year.

Resolved, that the thanks of the Meeting be given to the Secretary, for his great zeal and assiduity, and the very able manner in which he has discharged his duties.

(Signed) ILTID NICHOLL,  
Chairman.

#### ANNUAL MEETING OF THE LAW ASSOCIATION FOR THE BENEFIT OF THE WIDOWS AND FAMILIES OF PROFESSIONAL MEN.

THE following report of the Board of Directors was read at the annual General Court, held on Friday, 10th May, 1839. Benjamin Austen, Esq. in the Chair.

It is an interesting fact, that the annual reports of the association, from its first establishment in 1817, present a series of statements indicating its prosperous condition; and the directors have great satisfaction in announcing on the present occasion a continuance of its success.

<sup>a</sup> The following are the numbers wanted, and the Committee request the assistance of the Members in supplying them:—

1725, Jan. 2 to August 21, both inclusive.

1736, May 11 and 15.

1766, May 24, Nov. 11 and 25.

1769, Feb. 25.

1773, Jan. 2, to April 27, both inclusive.

1775, August 8 and 12.

1791, March 26, June 28, July 23, Aug. 13, Nov. 26, Dec. 24, and 27.

Seventeen years have now elapsed since the capital of the Association, as contemplated by the 50th rule, amounted to the sum of 10,000*l.* stock. To this amount various subsequent additions have been made; and the Directors are now enabled to recommend that a further sum of 234*l.* 17*s.* 2*d.* should be purchased, by which the amount of capital will be increased to 18,000*l.* three per cents.

When to this prosperous view of the state of the Association it is added, that the Directors have met with a liberal hand the numerous and pressing calls upon the income, and that the claimants on its bounty have not been abridged of that relief which could with prudence be bestowed, the Directors feel that there is real cause for thankfulness and encouragement.

During the past year two claims have been made by the families of deceased members, and have been added to the permanent list, thus augmenting the number of cases to eighteen families, among whom the sum of 874*l.* 10*s.* 8*d.* has been distributed in the course of the year.

In allusion to so considerable an amount, the directors cannot refrain from calling the attention of the subscribers to a statement in this report, shewing the comparative increase of the relief afforded in a period of eight years.

From that statement it will be seen, that in the year 1830, there was expended in relief to permanent cases, 205*l.*; in 1834, 450*l.*; and in 1838, 932*l.*

Although a small diminution of expenditure in the relief of permanent cases has occurred during the present year, the Directors cannot but look to a considerable increase of the claims upon the resources of the Association as time advances, and they feel, therefore, compelled to allude to that period when, by reason of such claims, the Association will be under the painful necessity of refusing relief to all applicants who do not come strictly within the scope of its originally professed objects:—so important does this consideration appear to be, that in case the General Court shall feel disposed to renew their grant for the benefit of non-members' families, the directors recommend the same for the ensuing year to be limited to 50*l.* only. Of the 100*l.* voted at the last general meeting for this object, 95*l.* have been distributed: and the assistance thus afforded, although in each case necessarily of small amount, has proved of essential service, and been received with thankfulness. The Directors have reason, however, to believe, that it would not only conduce to the prosperity of this institution, but that a larger income would be realized for this class of applicants, were a separate fund raised by subscription for their benefit.

The Directors are satisfied that the liberality of the profession will not allow any reduction in the accustomed relief to the regular claimants on the funds of the Association, who receive with gratitude the benefit conferred upon them; nor will they at once cut off the whole of that useful branch which is distributed to others who are not regular claimants upon

its bounty, more especially as the recommendation is of so small a sum as £50.

Fifteen Annual and Two Life Members have been added to the list of Subscribers since the last Annual Court.

The Directors have the satisfaction to report a legacy of 100*l.* three per cent reduced stock, under the Will of the late Philip Hammersley Leathes, Esq., of the Bank of England, who had formerly been a Solicitor.

They have also to report a donation of Ten Guineas, from J. W. Freshfield, Esq., M. P., one of the Trustees.

It has been suggested to the Directors that it would conduce to the advantage of the association, if the members were called together for the purpose of holding an Anniversary Festival. The Directors are most anxious to promote the welfare of this institution, and if that object could be attained by such means, they would most willingly act upon the suggestion; but there are so many difficulties attending the execution of the plan, that they are reluctantly compelled to forego this object for the present.

In conclusion, the Directors earnestly entreat every Member of the Association to spread the knowledge of its existence and its important character amongst the members of the profession at large, and to unite by every means in their power in supporting and promoting the efficiency of a charity which not only extends the hand of beneficence to the widows and fatherless in their affliction, but combines the happiness of contributing to the wants of those members of the profession whose circumstances have been reduced by calamity.

(By Order of the Board,)

JOHN MURRAY, Sec.

#### INCORPORATED LAW SOCIETY.

##### *Members admitted, June 1839.*

John Pike, Golden Square.  
Arthur Bayley Markham, Acton.  
William Sheffield, Great Prescott Street.  
Edward Law Hussey, Maidstone.  
William Wilkins Dyne, Lincoln's Inn Fields.  
Peter Samuel Fry, Cheapside.

#### MASTERS EXTRAORDINARY IN CHANCERY.

*From 25th June to 19th July, 1839, both inclusive, with dates when gazetted.*

Cornhelm, John, Leeds. June 28.  
Lyne, William John, Woodhouse, Cumberland. June 28.  
Atkins, Thomas Sarsden, Oxford. June 28.  
Senior, Charles, Liverpool. July 2.  
Bunting, Jabez, jun., Leeds. July 9.  
Upton, Thomas, Petworth, Sussex. July 19.

#### DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

*From 25 June to 19 July, 1839, both inclusive, with dates when gazetted.*

Foot, Samuel, and Henry Brodribb, Salisbury, Attorneys and Solicitors. June 25.

Curtler, Thomas Gale, and John Cartler, Droitwich, Worcester, Attorneys and Solicitors. July 2.

Hartley, John, and George Bannister, jun., Colne, Lancaster, Attorneys and Solicitors. July 9.

Bolton, William Gillmore, Joseph Copeland Bell, and Samuel Benjamin Merriman, Austin Friars, London, Attorneys and Solicitors. July 16.

Hinchliffe, George, and William Hayes, Westbromrich, Stafford, Attorneys and Solicitors. July 16.

#### BANKRUPTCIES SUPERSEDED.

*From 25th June to 19th July, 1839, both inclusive, with dates when gazetted.*

Frankland, William, Liverpool, Hackney Coach and Car Proprietor and Livery Stable Keeper. July 5.

Mogridge, Edward, Tipton Mills, Ottery, Saint Mary, Devon, Miller. July 16.

#### BANKRUPTS.

*From 25th June to 19th July, 1839, both inclusive, with dates when gazetted.*

Adams, Robert, Greek Street, Soho, Engineer. Abbott, Off. Ass.; Davies, Warwick Street, Golden Square. July 5.

Atkinson, Anthony, Barnard Castle, Durham, Farmer. Blake & Co., King's Road, Bedford Row; Coulthard, Barnard Castle. July 12.

Akers, Irwin, Liverpool, Tailor. Wilde & Co., College Hill, London. Cornthwaite, Liverpool. July 19.

Boileau, Simeon John, Greville Street, Brunswick Square, and other places in the County of Middlesex, Dairyman and Milk Dealer. Graham, Off. Ass.; Pulling, Temple. June 25.

Blyth, Robert, Lynn Regis, Norfolk, Brewer. Clarke & Co., Lincoln's Inn Fields; Beckwith & Co., Norwich. June 25.

Beer, William, and Harriet Venn, Bristol, Colour Makers. Haynes, jun., Staple Inn; Williams, Bristol. July 2.

Baker, Benjamin, Liverpool, Marble Mason. Vincent & Co., Temple; Littledale & Co., Liverpool. July 2.

Brown, James, Oldham, Lancaster, Grocer and Tea Dealer. Adlington & Co., Bedford Row; Ascroft, Oldham. July 2.

Bentley, John, and Thomas Brown, Manchester, and of Bradford, York, Merchants. Jacques & Co., Ely Place; Crowsley, Bradford. July 5.

Beckett, Jonathan, Liverpool, Ironfounder and Ironmonger. Neal, Liverpool. July 5.

Bird, Samuel, Leamington Priors, Warwick, Plasterer and Builder. Weeks & Co., Cook's Court, Lincoln's Inn; Carter & Co., Coventry. July 5.

Barker, Thomas, and Richard Amsworth, Warrington, Lancaster, and also of Manchester, Cotton Spinners. Makinson & Co., Temple; Atkinson & Co., Manchester. July 16.

Buckley, John Thompson, Liverpool, Cheese Factor and Provision Dealer. Vincent & Co., Temple; Birkett & Co., Liverpool. July 16.

Cole, William, Crane Court, Fleet Street, London, Printer and Publisher. Clark, Off. Ass.; Parker, St. Paul's Church Yard. June 25.

Currie, Neil, otherwise Neil James Currie, Regent Street, Army Accountment Maker. Gibson, Off. Ass.; Evans, Lincoln's Inn Fields. June 28.

- Cooper, Leonard and Matthew Case, Manchester, Cotton Manufacturers and Commission Agents. *Sharpe*, Staple Inn; *Rowley & Co.*, Manchester. July 16.
- Cowper, Geo., Newcastle-upon-Tyne, Tea Dealer. *Hald*, Austin Friars; *Hewison*, Newcastle-upon-Tyne. July 16.
- Colston, Nicholas, Brixham, Devon, Draper. *Blake & Co.*, Essex Street, Strand; *Presswell*, Totnes. June 25.
- Dawe, George Charles, Regent Street, Printseller, and Publisher. *Lackington*, Off. Ass.; *Jenkinson*, Walbrook. June 25.
- Dalmaine, George William, Abchurch Lane, Cannon Street, Victualler. *Lackington*, Off. Ass.; *Sawyer*, Bow Lane. July 5.
- Deeble, William Henry, Bristol, Accountant and Appraiser. *Richards & Co.*, Lincoln's Inn Fields; *Elkington*, Birmingham. July 12.
- Eastwood, Jonas, and Isaac Woodhead, Meltham, York, Manufacturers. *Battye & Co.*, Chancery Lane; *Archer*, Ossett. July 19.
- Fraser, John, Liverpool, Commission Agent and Broker. *Vincent & Co.*, Temple; *Littledale & Co.*, Liverpool. July 5.
- Franklin, Benjamin Wolfe, Liverpool, Merchant and Dealer in Bullion. *Holden & Co.*, Liverpool; *Walmsley & Co.*, Chancery Lane. July 5.
- Fairbank, Joseph, Manningham, Bradford, York, Worsted Spinner. *Hawkins & Co.*, New Boswell Court, Lincoln's Inn; *Wells*, Bradford. July 16.
- Gorst, John Richardson, Liverpool, Coach and Harness Manufacturer. *Taylor & Co.*, Bedford Row; *Laces & Co.*, Liverpool. July 25.
- Graham, Charles, Liverpool, Marine Store Dealer. *Holden & Co.*, Liverpool; *Walmsley & Co.*, Chancery Lane. July 2.
- Green, John, City Road, Nail Factor. *Cannan*, Off. Ass.; *Smith & Co.*, King's Arms Yard. July 9.
- Galloway, James, Theobald's Road, Red Lion Square, Ironmonger. *Clark*, Off. Ass.; *Mansfield*, John Street, Bedford Row. July 9.
- Glover, John, Stafford, Painter, Plumber, and Glazier. *Nicholls*, Cook's Court, Lincoln's Inn; *Pasman*, Stafford. July 12.
- Harvey, George, Handsacre, Stafford, Spirit and Cyder Merchant. Messrs. *Bond*, Lichfield; *Lawrence & Co.*, Old Fish Street, Doctor's Commons. July 2.
- Hall, Thomas Westbury, Fen Court, Fenchurch Street, Drysalter and Commission Agent. *Green*, Off. Ass.; *Tanner*, Pudding Lane. July 5.
- Hobson, Benjamin, Liverpool, Hostler and Draper. Messrs. *Lowe*, Temple; *Leigh & Co.*, Liverpool. July 5.
- Hogg, Mary, Hall Arm, Aldborough, York, Wharfinger and Coal Merchant. *Douglass & Co.*, Verulam Buildings, Grays Inn; *Holmes*, Borobridge. July 9.
- Hobley, William, late of Warwick, Grocer; but now of Bickenhill, Warwick, Inn-keeper. *Michael*, Red Lion Square; *Amos*, jun., Evesham. July 16.
- Hancock, John, Welbeck Street, Cavendish Square, Bath Proprietor, and Dealer in Laurel Oil and Timber. *Whitmore*, Off. Ass.; *Adamsen*, Ely Place. July 19.
- Jones, William, Newport, Monmouth, Shopkeeper. *Hall*, New Boswell Court, Lincoln's Inn; *Prothero & Co.*, Newport. June 25.
- Jackson, Richard, Great Bolton, Lancaster, Organ Builder, and Music Seller. *Norris & Co.*, Bartlett's Buildings, Holborn; *Jackson*, Great Bolton. July 5.
- Jackson, Charles, Macclesfield, Chester, Silk Throwster. *Crowder & Co.*, Mansion House Place, London; *Grimditch & Co.*, Macclesfield. July 16.
- Kennedy, John, and Samuel Hill, Llanbilleth, Monmouth, Iron Manufacturers and Iron Dealers. *Hall*, New Boswell Court, Lincoln's Inn; *Prothero & Co.*, Newport. July 16.
- Kent, Samuel, Salford, Lancaster, Victualler. *Bower & Co.*, Chancery Lane; *Owen & Co.*, Manchester. July 16.
- Lewis, Charles Robert, Richmond, Surry, Pawnbroker. *Clark*, New Broad Street Court, New Broad Street; *Robertson*, Gray's Inn. July 2.
- Loveridge, James, Bridport, Dorset, Cabinet Maker and Upholsterer. Messrs. *Brace*, Cheapside, and Surry Street, Strand. July 2.
- Lewis, Henry, Castle Cary, Somerset, Glazier. *Hall*, Bristol; *Clarke & Co.*, Lincoln's Inn Fields. July 2.
- Lowcock, William, Liverpool, Butcher and Cattle Dealer. *Kirk*, Symond's Inn; *Plumbe*, Liverpool. June 2.
- Lawless, Joseph, Manchester, Commission Agent, Manufacturer, Calico Printer, and Livery Stable Keeper. *Makinson & Co.*, Temple; *Atkinson & Co.*, Manchester. July 9.
- Long, Charles, Bradford, Wilts, Wharfinger and Carrier. *Hayman*, Bath; *Vandercom & Co.*, Bush Lane, Cannon Street. July 19.
- M'Ardle, Peter, Liverpool, Victualler and Marine Store Dealer. *Bradshaw & Co.*, Liverpool; *Holme & Co.*, New Inn. July 2.
- Maguire, Thomas, Liverpool, Publican, and Ship and Anchor Smith. *Pedder*, Liverpool; *Willis & Co.*, Tokenhouse Yard. July 2.
- Mansell, Frederick, Myddleton Street, Clerkenwell, Engraver and Printer. *Belcher*, Off. Ass.; *Selby*, St. John's Street Road. July 5.
- M'Coy, Anthony, Liverpool, Marine Store Dealer and Victualler. *Vincent & Co.*, Temple; *Littledale & Co.*, Liverpool. July 5.
- Moody, George, Manchester, and of Milk Street, Cheapside, London, Stuff Manufacturer and Merchant. *Humphreys & Co.*, Manchester; *Walmsley & Co.*, Chancery Lane. July 9.
- Mangnall, William, Manchester, and also of Salford, Lancaster, Manufacturing Chemist and Linen Draper. *Makinson & Co.*, Temple; *Atkinson & Co.*, Manchester. July 16.
- Mason, Horatio, Calver, Derby, Cotton Spinner. *Walmsley & Co.*, Chancery Lane; *Humphreys & Co.*, Manchester. July 16.
- Mould, Joseph, and Charles Mould, Newgate Street, Cheesemongers. *Graham*, Off. Ass.; *Fraser*, Serjeant's Inn. July 9.
- Moss, James Dennett, Liverpool, Watch Maker. *Keightley & Co.*, Liverpool; *Keightley & Co.*, Chancery Lane. July 19.
- Nelson, Henry, Watling Street, London, Warehouseman. *Turquand*, Off. Ass.; *Smith & Co.*, Coopers' Hall, Basinghall Street. June 25.
- Nicoll, Philip Clement, Southampton, Wine Merchant. *Walker*, Southampton Street, Bloomsbury; *Deacon & Co.*, Southampton. June 25.
- Pemberton, Busick Richards, Basinghall Street, London, Wool Broker. *Pennell*, Off. Ass.; *Crowder & Co.*, George Street, Mansion House. June 28.
- Paynter, Hercules, Bank Chambers, and Garlick Hill, London, Builder and Box Maker. *Johnson*, Off. Ass.; *Wood & Co.*, Falcon Street, Aldersgate Street. July 2.

- Potts, George, New Montague Street, Spitalfields, Cabinet Maker. *Turquand*, Off. Ass.; *Sheffield & Co.*, Great Prescott Street, Goodman's Fields. July 9.
- Peerman, John, Christchurch, Southampton, Brewer and Spirit Merchant. *Druitt*, Christchurch; *Dean*, Guildford Street. July 12.
- Poulton, Joseph, Lane End, Stafford, Grocer. *Norris & Co.*, Bartlett's Buildings, Holborn; *Toulmin*, Liverpool. July 16.
- Phipps, John, Stratford-upon-Avon, Warwick, Cabinet Maker and Upholsterer. *Adlington & Co.*, Bedford Row; *Nettleship*, Harley Street; *Lane*, jun., or *Hobbes*, Stratford-on-Avon. July 19.
- Price, Joseph, Birmingham, Jeweller. *Tilleard & Co.*, Old Jewry; *Ingleby & Co.*, Birmingham. July 19.
- Pitt, Charles, sen., and Charles Pitt, jun., Canterbury, Druggists. *Kirk*, Symond's Inn, Chancery Lane; *De Lasaux*, Canterbury. July 19.
- Roxby, Robert Benton, Mercer's Place, Commercial Road, Limehouse, Ship Owner. *Alager*, Off. Ass.; *Methold & Co.*, Lincoln's Inn Fields. July 2.
- Ramabottom, John, Manchester, Hackney and Stage Coach Proprietor. *Morris*, Manchester; *Scott & Co.*, Lincoln's Inn Fields. July 5th and 9th.
- Robinson, Josiah George, Liverpool, Broker and Commission Merchant. *Vincent & Co.*, Temple; *Littledale & Co.*, Liverpool. July 9.
- Renwick, James, Liverpool, Wine Merchant. *Vincent & Co.*, Temple; *Littledale & Co.*, Liverpool. July 9.
- Robinson, Thomas, Hungerford Street, Strand, Tallow Chandler. *Belcher*, Off. Ass.; *Adamson*, Ely Place, Holborn. July 12.
- Root, John, and James Wedderburn Christie, Burdett Street, Walworth Common, Surrey, Brewers. *Graham*, Off. Ass.; *Crowder & Co.*, Mansion House Place. July 12.
- Rosenthal, Marcus, Manchester, Fustian Manufacturer. *Hadfield*, Manchester; *Johnson & Co.*, Temple. July 19.
- Salomonson, Salomon, Threadneedle Street, London, Merchant. *Green*, Off. Ass.; *Phipps*, Mercer's Hall, Basinghall Street. June 25.
- Smith, James, Newbury, Berks, Baker and Grocer. *Pindiger*, Newbury. June 28.
- Shipway, Thomas, Stroud, Gloucester, Clothier. *Paris*, Stroud; *Shearman & Co.*, Gray's Inn. June 28.
- Samuels, John, Lawrence Lane, Cheapside, Commission Agent. *Lackington*, Off. Ass.; *Godard*, King Street, Cheapside. July 2.
- Sharrocks, Samuel, and Henry Sharrocks, Charlton upon Medlock, Lancaster, Cotton Spinners. *Cooper*, Manchester; *Adlington & Co.*, Bedford Row. July 5.
- Stephens, Thomas, Liverpool, Marine Store Dealer. *Vincent & Co.*, Temple; *Littledale & Co.*, Liverpool. July 5.
- Sutton, George, Hartington, Derby, Grocer and Draper. *Fox*, Ashbourne; *Abbott & Co.*, Charlotte Street, Bedford Square. July 5 & 9.
- Smithies, Richard, Runcorn, Chester, Tailor. *Adlington & Co.*, Bedford Row; *Nicholson & Co.*, Warrington. July 9.
- Solomon, Philip, and Israel Jacobs, Manchester, Manchester Warehousemen. *Perkins*, Gray's Inn Square; *Perry*, Manchester. July 9.
- Stubbing, William Walter, Manchester, Grocer. *Payne & Co.*, Liverpool; *Vincent & Co.*, Temple. July 16.
- Taylor, John, Liverpool, Banker. *Holden & Co.*, Liverpool; *Walmley & Co.*, Chancery Lane. July 2.
- Trenor, John, Bradford, York, Merchant and Provision Dealer. *Richards & Co.*, Lincoln's Inn Fields; *Barber*, Brighthouse, near Halifax. July 2.
- Trenor, John, and Bernard Trenor, Bradford, York, and of Bow Lane, London, Bacon Factors and Stuff Merchants. *Jagues & Co.*, Ely Place; *Crosley*, Bradford. July 9.
- Thompson, James, Manchester, Manchester Warehouseman. *Makinson & Co.*, Temple; *Athinson & Co.*, Manchester. July 16.
- Thomas, John, Bridport, Dorset, Baker. *Templer & Co.*, Bridport; *Clowes & Co.*, Temple. July 16.
- Trotter, James, Liverpool, Auctioneer and Appraiser. Messrs. *Christian*, Liverpool; *Leawe & Co.*, Southampton Buildings. July 19.
- Vaughan, Joseph, Pratt Street, Lambeth, Surrey, Oil and Colourman. *Whitmore*, Off. Ass.; *Slee*, Parish Street, St. Luke's, Southwark. June 28.
- Vinson, Thomas, Bideford, Devon, Tailor and Draper. *Jones & Son*, Sise Lane, London. July 16.
- Wilson, Thomas, Manchester, Hatters' Trimmings and Small Ware Manufacturer. *Chester*, Staple Inn; *Chapman & Co.*, or *Simpson*, Manchester. June 25.
- Whitby, Thomas, Red Lion Wharf, Upper Thames Street, Coal Merchant. *Johanson*, Off. Ass.; *Carter & Co.*, Lord Mayor's Court Office, Old Jewry. June 28.
- Wisedell, William, and William Cockett, New Cut, Lambeth, Surrey, Ironmongers. *Edwards*, Off. Ass.; *Biggoli & Co.*, New Bridge Street. July 2.
- Ward, William, Leeds, Cloth Merchant. *Battye & Co.*, Chancery Lane; Messrs. *Lee*, Leeds. July 12.
- Worthington, David, Manchester, Flour Dealer. *Adlington & Co.*, Bedford Row; *Claye & Co.*, Manchester. July 16.
- Walker, Thomas Hook, Snaith, York, Miller and Baker. *Capes & Co.*, Bedford Row; *Shearburn*, Snaith. July 19.
- Yarroll, Thomas, and William Yarroll, of Commercial Place, City Road; and of Goswell Street, and of Shepherdess Walk, City Road, Tailors. *Groom*, Off. Ass.; *Mardon*, Newgate Street. July 5.

## PRICES OF STOCKS.

Tuesday, 23rd July, 1839.

Bank Stock, div. 7 per Cent.	189
3 per Cent. Reduced	92½ a ½ a ½ a ½
3 per Cent. Consols Annuities	92½ a 1 ½ a 2
3½ per Cent. Reduced Annuities	99½ a 100 a 99½ a 100
New 3½ per Cent. Annuities	99½ a 100 a 100 a 100
Long Annuities, expire 5th Jan. 1860	14½ a 15
Annuities for 30 yrs., exp. 10th Oct. 1859	14½ a 15
Ditto 5th January, 1860	14½ a 15
India Stock, div. 10½ per Cent.	254 a 3
Ditto Bonds, 3 per Cent.	26 a 23 pm.
3 per Cent. Cons. for Acct., Aug. 29	92½ a 100
Exchequer Bills, 1000 <i>l.</i> a 2 <i>d.</i> and 1½ <i>d.</i> 18 <i>s.</i> a 16 <i>s.</i> pm.	
Do. 500 <i>l.</i> a 2 <i>d.</i> and 1½ <i>d.</i>	17 <i>s.</i> a 19 <i>s.</i> pm.
Do. Small, a 2 <i>d.</i> and 1½ <i>d.</i>	18 <i>s.</i> a 20 <i>s.</i> pm.

# The Legal Observer.

SATURDAY, AUGUST 3, 1839.

— " Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## THE COPYHOLD ENFRANCHISE- MENT BILL.

THE Copyhold Enfranchisement Bill will not be proceeded with any further in the present Session; but we conceive that the friends of that measure have reason to be well satisfied with the result of their exertions. More was never done in any measure of a similar character. In all legal reforms the legislature has proceeded with great caution and deliberation; and although we hoped that this might have been an exception, yet perhaps it is well as it is. It may, and we trust it will, end in a more full and extensive measure being passed in the next Session. We will now give some account of what passed on Monday last.

In the first place, we may mention, that, in the House of Commons, Sir Edward Sugden complained of the late hour at which the Bill had been read a third time in that House. Now we are afraid that he is too apt to consider that nothing can be done when he happens to be absent. The principle of the Bill was admitted from the first; it was founded not only on the recommendations of the Real Property Commissioners, but on the Report of the Select Committee, and the time for discussing it was in the Committee. The Bill was twice committed; the first time considerable alterations were made; the second time no alterations were made at all; but on both these occasions the Bill came on at a very early period of the evening, and ample opportunity was given for discussion. The next stage was bringing up the Report, and on neither of these latter occasions was any difficulty or opposition made. It was quite natural therefore for the supporters of the measure to consider that it was no

longer opposed, more especially as the compulsory clauses had been struck out of the Bill. We cannot, therefore, but regret the petulance of Sir Edward Sugden on this and other occasions, which greatly impairs the weight which his talents and position would otherwise give him.

Let us now proceed to tell the fate of the Bill in the House of Lords. Lord Brougham undertook charge of it, and he undoubtedly brought to the task great information on the subject, much zeal and energy, and all those powers of rendering a dry and technical subject amusing and captivating which so peculiarly distinguish him. But early in the evening symptoms manifested themselves that there was a disinclination to proceed with the Bill in the present Session. Lord Lyndhurst, before the debate came on, proposed delay,—offering, however, to devote the early part of the next Session to the full consideration of the measure. Lord Brougham avoided a direct reply, wisely waiting to see what the feeling of the House might be after he had opened it. This he did soon afterwards, at considerable length, with great clearness, and abundant illustration of the existing evils of the copyhold tenure. He was listened to with great attention—he keeping, as usual, the interest of his auditors alive until the close of his address. Lord Lyndhurst then again urged the postponement of the measure until the next Session, on the ground that the Bill was of great importance, and that many Peers, who were opposed to some of the details, had left town. The Lord Chancellor, however, declared his opinion that there was no reason for postponement; that this was simply an enabling bill; that no further information respecting it was required; and then, re-

turning to the woolsack, he put the second reading, and the Bill was read a second time.

But it was obvious that there was no intention of letting it proceed any further. Lord Redesdale renewed the attack; and although the postponement was most manfully resisted by Lord Brougham, Lord Hatherton, and others, it was persisted in by the majority of their Lordships. Seeing therefore that there was a desire that it should be decided that night for the present Session, Lord Brougham moved that it should be committed, when there were—

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Not Content ..... 39

Majority 11, against proceeding with the Bill in the present Session.

It is to be observed, however, that after the division, as well as before, Lord Lyndhurst declared that he was not opposed to the principle of the Bill, but only to some of its details, and that he would be happy early in the ensuing Session to join with Lord Brougham, the Duke of Wellington, and the Ministers, in framing and passing a Bill for the Enfranchisement of Copyholds; and being hard pressed by Lord Brougham to say which of the details he objected to, he did not specify them; and we conceive, therefore, that the main features of the Bill may be considered as agreed to.

It is with this view that we repeat that the friends of the cause of Enfranchisement have good cause to be satisfied with the fate of the Bill. It will be proceeded with early in the next Session in the House of Lords, and clothed with all the strength of their sanction, and doubtless, with such improvements as their wisdom and experience suggest, it will go down to the House of Commons, and we have there no fear of its success.

## NOTES ON EQUITY.

### PARTITION SUIT.

AN infant tenant in common or joint-tenant may file a bill for partition, or such a bill may be filed against him. *Tuckfield v. Buller*, Amb. 197; S. C. 1 Dick. 240. A testator had devised his real estates to his three daughters as tenants in common, and the bill was filed by two of them against a third for a partition. The defendant, who had attained her majority, was a person of weak intellect, but had not been found so by inquisition, and had put in an answer by a guardian. The Vice Chan-

cellor (Sir L. Shadwell) made the usual order for a commission, and that the lands should be held in severalty, reserving further directions. It was admitted by counsel for the plaintiff that no order could be made for a conveyance from the defendant. *Hollingworth v. Sidebottom*, 8 Sim. 620.

### MAINTENANCE.

In the case of *Heysham v. Heysham*, 1 Cox, 197, under the circumstances of the case, the sum of 520*l.* per annum was allowed for the maintenance of an infant, and was ordered to be paid to her mother until further order. An increased allowance for maintenance has recently been ordered to be made out of the property of infants for the purpose of supporting their parents, who were in great indigence. Lord Langdale, M. R., said, I think this is a case in which the Court can increase the maintenance of the children for the support of their parents. I feel reluctant in doing it, for the conduct of the parents has been of the worst kind; but I think that, without saying anything as to the construction of the will [it having been argued that the parents were entitled to the interest of the fund under the will], I may give to the infants the benefit of the income of the property, so as to assist the parents. To do so is evidently for the benefit of the infants themselves. *Allen v. Coster*, 1 Beavan, 202.

### FORECLOSURE SUIT.

In *Rashleigh v. Dayman*, 2 Mad. 147, it was held to be contrary to the practice to advance a foreclosure suit to be heard as a short cause, unless with the consent of the defendant; and in *Lewis v. Molins*, Bea. 99, Lord Langdale, M. R., reluctantly dismissed an application of this nature with costs; but under the General Orders of the 9th of May 1839, order 4, *ante* p. 60, foreclosure causes are placed in this respect on the same footing as other causes.

## THE CLOSE OF THE SESSION.

THE Bills before Parliament are now daily diminishing, and we conceive that the session will not last beyond the second week in this month. We have no reason to change our opinion since last week as to the little that will be done this year. The Copyhold Enfranchisement Bill has been "slain in war," of which a particular ac-

count has been given in the first article. We think this will be heard with regret, both by the profession and the public. The Metropolis Police Bill will pass; but the fate of the Metropolis Police Court Bill is still uncertain. There is a vigorous endeavour to delay it as long as possible in the Lower House, and if any opposition is raised to it in the Lords, it must share the fate of the others, and be deferred, it having been agreed that no Bill calculated to excite discussion is to proceed. The Custody of Infants Bill has this year passed through its several stages without opposition, and will become the law of the land. Under the pressure of the recent disturbances, the Bill for the establishment of a Rural Police, which is, however, merely a *permissive* measure, will also pass; and when we give the same good luck to Sir Robert Peel's Bill for the Trial of Election Petitions, we are at the end of the list of *Acts* interesting to the profession. Let us therefore be content with these to beguile the vacation,—not forgetting, however, the *Postage Act*, to which we have already adverted.

#### CHANGES IN THE LAW IN THE PRESENT SESSION OF PARLIAMENT.

##### No. V.

##### 2 & 3 Vic. c. 27.

##### PROCEEDINGS IN BOROUGH COURTS.

*An Act for regulating the Proceedings in the Borough Courts of England and Wales.*  
[19th July, 1839.]

5 & 6 W. 4, c. 76. 6 & 7 W. 4, c. 105. Judges of courts of record in boroughs empowered to make, &c. rules for regulating the times of holding and practice in said courts. Such rules to be confirmed by three judges.—Whereas great difficulty has been found in framing legal and convenient rules for regulating the practice of borough courts under the authority given for that purpose by an act passed in the session holden in the fifth and sixth years of the reign of his late Majesty, King William the Fourth, intituled, “An Act to provide for the Regulation of Municipal Corporations in England and Wales,” and by an act passed in the session holden in the sixth and seventh years of the same reign, intituled, “An Act for the better administration of justice in certain boroughs;” and it is expedient that the power to make rules for regulating the proceedings of such courts, subject to the approbation and confirmation of the judges of the superior courts of Common Law at Westminster, should be explained and in some respects enlarged: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled,

and by the authority of the same, That in every borough named in the schedules A. and B. to the first herein-before mentioned act annexed, in which by charter, custom, or otherwise, there is or ought to be holden a court of record for the trial of civil actions, every judge of such court shall have authority to make, alter, and revoke such rules for appointing the times of holding such court, for regulating the forms and manner of proceeding, the process, appearance, practice, and pleadings in such court, and for settling the reasonable fees of the attorneys of the court for business transacted therein, as shall from time to time seem to him necessary and proper for expediting the business of such court with most convenience, and at the smallest reasonable expence: provided always, that no such rules, or any order revoking or altering such rules, shall be of any force until they shall have been allowed and confirmed by three of the judges of the superior courts of common law at Westminster.

2. *Courts to be held four times yearly.*—Provided also, and be it enacted, that every such court shall be holden for the trial of issues of fact and of law four times at least in each year, and with no greater interval between the holding of any two successive courts than four calendar months.

3. *Personal actions to be by summons.*—And be it further enacted, that from and after the first day of September next all personal actions brought in the borough courts of England and Wales shall be commenced by writ of summons.

4. *Act may be amended this session.*—And be it enacted, that this act may be amended or repealed by any act to be passed in this present session of parliament.

Among the multitude of local courts which have been so largely increased of late years, it is manifestly important that some degree of uniformity in the mode of proceeding should be secured. This act has been passed to effect that object, and we trust that the proposed rules and orders will be made known to the profession before they are approved by the judges, so that suggestions may be offered by those who are most competent to aid the judges in coming to a useful conclusion. ED.

#### NEW BILLS IN PARLIAMENT.

##### HOLDING ASSIZE COURTS.

This bill is intituled “An Act for enabling Justices of Assize and Nisi Prius, Oyer and Terminer, and Gaol Delivery, to hold Courts for Counties at large in adjoining Counties of Cities and Towns, and conversely.”

It recites that it would facilitate the despatch of business if her Majesty's justices of assize were authorized to hold the assizes of and for the counties at large in *England and Wales*, and also of and for any county of a city, county



of a town, borough, or other jurisdiction locally situate within or adjacent to such county at large, in any court house or other building, whether in or belonging to such county at large, or in or belonging to such county of a city, county of a town, borough, or other jurisdiction, indiscriminately: It is therefore proposed to be enacted:

That it shall be lawful for her Majesty's justices of assize, or other her Majesty's commissioners by whom any court shall be holden by virtue of any of her Majesty's commissions of assize or nisi prius, oyer and terminer, or general gaol delivery, in and for any county at large in *England and Wales*, or in and for any county of a city, county of a town, borough, or other jurisdiction locally situate within or adjacent to such county at large, from time to time, as often as they shall see fit, by proclamation in open court, to adjourn any such court from the court house or other building wherein they shall then be holding the same to such other court house or building as they may deem convenient, whether in and belonging to such county at large, or within and belonging to any such county of a city, county of a town, borough, or other jurisdiction locally situate within or adjacent to the same as aforesaid; and all jurors, prosecutors, witnesses, and other parties or persons who may have been theretofore bound over, subpoenaed, or required to appear before the said justices and commissioners in any cause or matter, whether criminal or civil, shall thenceforth appear and give attendance before the said justices and commissioners at such adjourned court, and there shall do and perform all such matters and things as they ought to have done and performed before and at such court prior to such adjournment, and in default thereof shall be subject to such and the same penalties and forfeitures as if they had made default before the said justices and commissioners prior to such adjournment; and all evidence given and all matters and things done and performed at such adjourned court, shall be deemed and considered, and in all indictments, pleadings, rules, and entries shall be alleged to have been given, done, and performed respectively within the county at large, or within the county of a city, county of a town, borough, or other jurisdiction, (as the case may be) within which such court was so as aforesaid holden prior to such adjournment.

#### PRIVILEGE OF PARLIAMENT.

We think the following petition so important that we shall print it *verbatim*, and we shall revert to the subject next week. Our readers will have seen the debate which took place respecting it on Thursday last. The question agitated is of no little interest to the profession.

The humble Petition of James Hansard, Luke Graves Hansard, and Luke James Hansard, Printers to this honourable House,

Sheweth,

That a Report and Minutes of Evidence on

the present state of the Islands of New Zealand was communicated by the House of Lords to this honourable House on the 7th of August 1838, which was ordered to be printed by this honourable House on the following day.

That your petitioners, in pursuance and in obedience of such order, printed the said Report and Evidence.

That your petitioners have received notice from Charles Shaw, 47, Fish Street Hill, attorney, of the commencement of an action against them for libellous matter alleged to be contained in the said Report and Evidence, reflecting on the character of Mr. Joel Samuel Poluck. A copy of the letter or notice is as follows:

"47, Fish Street Hill, 29th July, 1839.

"Gentlemen,

"I am instructed by Mr. Joel Samuel Poluck to commence an action against you for having printed and published the minutes of evidence taken before a Select Committee of the House of Lords respecting the Islands of New Zealand in the months of April and May 1838, and which evidence contains a false, scandalous, and malicious libel on his (Mr Poluck's) character. In order, therefore, to save you the inconvenience of personal service, I request you will furnish me with the name of your attorney, to whom I may send process on your behalf.

I am Gentlemen, your obedient Servant,  
"CHARLES SHAW."

Your petitioners therefore humbly pray the Instructions of your honourable House in the matter of this their petition, and in the course they should pursue in resisting or defending the said action.

JAMES HANSARD.  
LUKE G. HANSARD.  
LUKE JAMES HANSARD.

#### ADMIRALTY PRACTICE.—THE NEW BILL.

Sir,

IN your notice of bills now in progress through the House of Commons, I do not find you have drawn the attention of the profession to the bill committed on the 20th June last, for regulating the High Court of Admiralty and extending its Jurisdiction.

The bill proposes to confer on this Court an enlarged and concurrent jurisdiction with the Superior Courts at Westminster and other Courts of Record, in order that certain cases of contract and specialty matters, not hitherto held within its jurisdiction, may be decided by it. It also empowers the Court to direct issues to be tried; and commissions to be sent to barristers for taking examinations in certain cases, and to report upon the evidence; and to admit surrogates of the Court of Arches to practise in the Court.

Now, Sir, it appears to me, the profession ought particularly to watch this bill; for, in the first place, I do not see any provision in it

reserving to the Court of Chancery or the Queen's Bench their undoubted original and exclusive jurisdiction (where thought to be necessary) of *prohibiting* this Court in certain cases from proceeding to adjudicate. This requires attention, particularly from the little acquaintance we have in general with the principles on which decisions of the Admiralty Court are founded, seeing that proctors alone have the exclusive practice therein, and the entire emoluments therefrom.

We are to have decisions upon contracts under seal, in all matters relating to shipping, brought within the pale of the *proctor's exclusive* practice, where no *attorney* can follow; and consequently the public must consult the proctor solely, in exclusion of the more general organ of communication—the attorney. Here issues are to be tried; but where is the provision for the provincial attorney (who, undoubtedly, is the most fit person to get up evidence on the spot) to receive remuneration? Will the proctors do this? Commissions are to be directed to barristers to take the examination of witnesses. But where are the barristers to be found? In this town, containing upwards of 20,000 inhabitants, and where probably more matters connected with the Admiralty Court arise than in any town of its size, no barrister resides. Why cannot Commissioners be appointed from amongst *attorneys* as in the instance of the High Court of Chancery?

These are some of the subjects of omission in this bill, which I conceive would be obviated by continuing to the Court of Chancery and the Queen's Bench the power of issuing their writs of prohibition as hitherto, and by admitting *attorneys* to practise in the Court as well as *proctors* and *surrogates*, and directing the proposed commissions to *attorneys* and *solicitors* indiscriminately.

With a hope that some further notice may be taken of this bill, now that your attention has been directed to it, I with confidence leave it in your hands. J. C.

Great Yarmouth, 20th July, 1839.

[We believe that the Court of Admiralty will not acquire any additional jurisdiction by the new bill, and that under the power of sending issues to be tried in the Courts of Law, the attorneys of those Courts will alone practise. It will not be competent for proctors to act in the trial of such issues. We believe also that the proposed act will not deprive the Superior Courts of their power to issue writs of prohibition as heretofore. We shall, however, look further into the subject. ED.]

## NOTICES OF NEW BOOKS.

*Commentaries on the Law of Prescription in Scotland.* By Mark Napier, Esq., Advocate. Edinburgh, Thomas Clarke, 1839.

The scope and object of this work is thus stated by the author.

"The chief object of these Commentaries, is to clear the study of our law of Prescription from the perplexities which the subject has gradually contracted, since its introduction by the Scotch statutes down to the present time. While entering thus minutely into the subtleties of this intricate and voluminous chapter of the law of Scotland, the Author is not so presumptuous as to expect to have removed every doubt and difficulty, or to have escaped from all error in his own views. But if, in this attempt to submit both the theory and the practical working of Prescription to a closer examination and minuter analysis than that has hitherto received, he shall be found to have done any thing to enlighten the subject, or to have removed any obstructions in the way of a right understanding of its principles,—his labours have not been in vain.

"The part of these Commentaries now published embraces the universal principles of Prescription, and the origin and nature of their statutory modification in the Code of Scotland,—an examination of the distinctive nomenclature, negative and positive Prescription, with practical illustrations of the precise application of that distinction,—and also a review of the leading statutory conditions of title and possession, in the operation of positive Prescription upon feudal rights upon property, including that refined and difficult application of the act 1617, which has given rise to the doctrine of double title in questions of prescription.

"Another part will presently be published, comprehending the extension of the principle of positive prescription to cases of heritable rights independent of feudal title,—the operation of the negative prescription of forty years,—and the special replies evasive of the plea of prescription, including that important subject the statutory exception in favour of the rights of minors.

"A third and concluding part will embrace the lesser prescriptions and limitations of actions,—with a chapter of prescription considered in reference to international jurisprudence."

The work consist of, 1. The natural principles of prescription, and of its arrangement in the Roman Law. 2. Of the statutory introduction of the prescription of 40 years in Scotland. 3. Of the nomenclature negative and positive prescription, and of the general application of the two rules. 4. Of the feudal title of positive prescription, and of the possession with which it must be clad.

The following is the author's statement

of the nature of prescription, with the twofold acceptance of the modern term, and the question of the equity of a law of prescription as treated by the civilians.

"*PRÆSCRIPTIO*, in the Roman law, originally meant any exception. It came afterwards more particularly to signify *exceptio ratione temporis*, or that rule of exception which was understood to indicate a plea of freedom from claims in law, that plea being founded on a presumption of the pursuer's consent, deduced from the fact of his long forbearance. It stood chiefly distinguished from *USUCAPIO*, a more ancient law of the twelve tables, which, founded on similar presumptions, established property positively and absolutely through the merits or qualities of possession.

"In modern acceptance, however, the term Prescription comprehends the twofold sense, and may generally be defined and divided, as that law which, *ex tempore essentiam capiens*, is of force, either,

"1st. To establish, *positive*, a right of property upon certain conditions of possession; or,

"2d. To exclude, *negative*, the right of action, under certain circumstances of tardy pursuit.

"These are two distinct modes of proponing the plea of time, in reply, either to the claim of a proprietor for possession, or, to any other claimant in law. Not that time itself has any inherent virtue so to establish, or annul; for, say the cautious Doctors,—*tempus, ex suapte natura, vim nullam effectricem habet, nihil enim fit a tempore, quamquam nihil non fit in tempore*;'—but the structure of human society itself suggests the necessity of some practical arrangement of certain natural principles, protecting the important fact of possession in particular, and generally, assigning a limit to the vitality of a right of action; and this, says Voet, in order to prevent the inexpedient anomaly of an infinite right to pursue, in the hands of a finite and mortal litigant.

"That a law, so highly esteemed in the civil institutions of most countries should have its foundation in no principles of natural reason, seems a proposition not likely to have divided the Doctors. Yet this has been made so grave a question, that it ought not to be passed over in reviewing the history of Prescription.

"Cujacius endeavours to prove that Prescription is repugnant to natural equity. His argument is shortly this: A prescriptive right to property involves the idea of its being derived *a non domino*; and yet, according to the natural idea of property, no one can transfer it who is not himself proprietor. But Cujacius at the same time admits the very principle which composes the natural apology of the law, and redeems it from a shadow of injustice: '*Est sane ita,*' he says, '*pugnat, enim, hac in re, jus civile cum naturali æquitate; sed tamen, hoc fit bono publico.*'

"Grotius finds great difficulty (*gravis hic difficultas oritur de usucapiendi jure*) in the question whether prescription be a law consonant to nature, and right reason. Yet he

admits that it may be strictly deduced from natural justice: '*Venit enim hoc non ex jure civili, sed ex jure naturali quo quisquis suum potest abdicare, et ex naturali presumptione, qua, voluisse quis creditur quod sufficienter significavit; quo sensu recte accipi potest quod Ulpianus dixit, juris Gentium esse acceptilationem.*'

"Wolfius gives a very sufficient reply to the objection of Cujacius, and the doubts of Grotius. Without admitting that the lapse of time, or the mere fact of continued possession, are in themselves sufficient to annul obligations, or to establish right, he maintains the question to be truly this, namely, whether in certain cases it is not the dictate of natural law that *dereliction be presumed*; and whether, to such presumed dereliction the same legal effect should not be given as to positive and express dereliction. He adds, that the practical arrangement, or modification, of these natural principles is a separate consideration, and the province of civil law.

"To Vattel—who, in his celebrated work on the law of nations, has abridged the prodigious labours of Wolfius,—we are indebted for a clear and masterly exposition of the theory. The right of property, he says, is not an original law of nature, but is one the introduction of which nature sanctions for the advantage of mankind in a state of society. Dominion and property, however, being established upon this principle, it would be absurd to say that natural law recognised any right of property which tended to disorganize human society. Yet such would be the effect of apparently abandoning one's own property, and after a long lapse of time wresting it from a *bona fide* possessor, who perhaps had paid for it, or obtained it by inheritance, or in a dowry with his wife; and who might have exerted himself to acquire other property, had he been aware of the precarious tenure of this. The law of nature, so far from conferring upon a proprietor any such right to the detriment of society, dictates to every proprietor the careful protection of his property, and imposes the obligation not to keep his right latent to the prejudice of others. Upon such conditions only does nature sanction and confirm man's own conventional establishment of the individual right of holding property. If a proprietor have neglected his property so long that to permit him to vindicate it would be to compromise the rights of others, the law of nature forbids the vindication. The right of property is not to be considered so tenacious and infinite, that, at the hazard of every inconvenience to human society, it may be neglected or reclaimed according to caprice. For what other end than the tranquility, security, and general advantage of mankind, does the law of nature ordain that the right of property shall be protected wherever it exists? Upon the very same principle, that law equally ordains, that whoever for a long period and without sufficient reason, neglects his right, shall be presumed to have abandoned and renounced it altogether. This is that absolute presumption, *juris et de jure*, of dereliction, which affords a

fair and legal ground for the enjoyment of it by some one else. This absolute presumption does not mean a conjecture merely as to the secret will of the proprietor, but a position which the law of nature requires should be received as incontrovertible; and for the sake of preserving order and peace among men. Thus, a title is established in the person of the possessor, as absolute and equitable in every respect as any other title of property; which titles all arise from, and are sustained by, the same rational principle. Supported by this presumption, the *bona fide* possessor holds a right under the sanction of the law of nature; and that same law which inculcates the stability and certainty of rights in general, does not permit a possession so qualified to be disquieted.

"Such are the views of the most profound writers upon a question which, though seemingly not beyond the reach of common sense, has from time immemorial been made the ground of subtle discussion and elaborate argument. And such are the simple and obvious dictates of nature and reason, upon which the various artifices and necessities of human jurisprudence have reared the refined and complicated structure of the law of Prescription."

The ancient history of the law of prescription and its application, are thus summed up.

"If, as Lord Stair says, 'the Romans ascribed the introduction of prescription to themselves,' it must have been in their proud sense of identifying their code with the law of nature. The Greek philosophers were well acquainted with prescription as a law suggested by natural justice. Indeed those sages, from whom the nascent Roman state is said to have derived the wisdom of the Twelve Tables, speak of prescription in terms familiar to our modern conceptions. 'With regard to doubtful possessions,' says Plato in his Republic, 'there must be a fixed term beyond which he who has enjoyed that possession should no longer be disquieted. The fixed and certain tenure of lands and houses admits of no doubt of the kind. With regard to moveables, if the possessor makes no secret of his possession, but holds it in the city, in the market-place, in the places of public worship, without interruption from any claimant, then though the real owner has been searching for it all the while, if one year expire under such circumstances, there shall be no repetition.' The philosopher then proceeds to arrange his *lex temporis* under different circumstances and various conditions.

"Isocrates also observes: 'You know that it is generally received that possession, both public and private, is confirmed by a long course of Prescription, and that such possession ought to be regarded as property.'"

"The application, however, of this venerable rule was peculiar and limited. It was regulated by the distinction between *res Mancipi*, and *res nec Mancipi*, and by the haughty pre-eminence of Italy over her provinces. This dis-

inction was founded upon a peculiar privilege of the Roman state, as distinguished from the provinces. Rights of land property in Italy, and those in the provinces, were on a very different footing. In Italy, and in certain provinces upon which the *Jus Italicum* was conferred, land might be enjoyed in absolute ownership: it might be the subject of transfer by mancipation '*per æs et libram*,'—a solemn mode of testamentary disposition, the peculiar privilege of Roman citizens. But in the provinces, no more could be enjoyed than what was termed the *dominium utile* of land; the absolute ownership, or *dominium directum* of such property, being vested in the Roman state. Now, this provincial possession did not pass from one to another by solemn ceremony of *mancipatio*, but by delivery of possession by means of a symbol on the spot."

The following early notices of prescription in the law of Scotland, are interesting.

"The language and reasoning of the Roman law have entered our most important discussions of Prescription, and have been blended with those profound views of the subject which so eminently record the legal and speculative talent of the Scottish bar. It is necessary, however, while recurring to such valuable principles, not to lose sight of the fact, that, when the Roman law was generally adopted by our forefathers as the common law of this country, those two modes of applying pleas founded on the lapse of time, namely, either to cut off the right to pursue claims in law generally, or to favour possession in particular, (as separately expressed by the terms *Prescriptio* and *Usucapio*), were not included in that adoption. There appears, indeed, to have been some idea of Prescription with us twenty years prior to our oldest statute on the subject. In the act 1449, c. 30, of contumacy, it is enacted, that if a party is summoned by another before the king and his council, and "be contumax," then, 'gif the cause be on *fee* and *heritage*,' the pursuer is to be put into possession of the contumacious defender's land, until the latter shall have fully paid all the fines and expences of his contumacy; 'the quhilk done,' the act proceeds to say, 'he shall be heard in the principal cause moved against him, not again-standing the decreit of possession before given, *bot gif* (unless) *he bide sa lang* that prescription lauchfully be runnyn.' This is the earliest mention of Prescription which I have observed in the annals of our law, and the cursory notice is remarkable. The old act touches upon Prescription, and, it will be observed, prescription of a right to reclaim *heritable* possession, as if the country were already well acquainted with the merits and bearings of that important plea. Probably, however, this was but a vague allusion to some prescription of the Roman law, conceived to be necessarily applicable in the law of Scotland. Balfour, too, mentions an old decision which seems declaratory of a common law by which the right to reduce a decree was lost, *non utendo*, in thirty years, being the Roman limit of the general exclusion

of action. Some attempts were also made to plead *Usucapio* as the common law of Scotland; but these never received any countenance in judgment, and Lord Stair, while he admits that 'the name and nature of Prescription we have from the civil law,'—adds,—'By our ancient custom there was no place for prescription, in any case, which hath been corrected by our statutes both as to long and short prescriptions.'

"Prescription, then, properly speaking, was only first known to our law in the minority of James III., (long after the Roman code was familiar to our tribunals,) by the act 1469, c. 28, entitled,—"*Of obligations to be followed within fortie zeir, or else prescrive.*"

The distinction between positive and negative prescription in the Roman Law, and that of France and England, is thus stated:

"Admitting that the positive prescription of Scotland is, in its *feudal adaptation*, peculiar to Scotland, it is not so easy to understand the assertion that in no country but Scotland was there any rule of prescription but a negative rule. The being obliged to plead upon a *feudal tenure*, or *written title*, of property, is not that which alone can render a plea of prescription positive. Propounding the plea, in a competition for the *jus in re*, upon any merits, qualities, or conditions of possession, makes a positive plea. True, supposing the feudal condition of a written title, occurring in our positive prescription of forty years, to be abstracted, there would remain only the features of the Roman *Præscriptio longissimi temporis*, which was a negative prescription. But that is not to say that the Romans had no positive prescription. The *Usucapio* of the twelve tables, and the *Præscriptio longi temporis* of Justinian, may as accurately be termed positive prescription as that which operates in Scotland by the first part of the act 1617. Then, with regard to other countries, it seems scarcely accurate to restrict the idea of Prescription to the term negative. In France there was one rule of Prescription by which a *possessor acquired* the free and absolute property of the subject possessed, by virtue of certain conditions of possession; and there was another rule of prescription which simply limited the endurance of a *creditor's right of action* within a certain reasonable period. This latter rule Pothier classed under the doctrine of obligations; the former he expounds in his treatise of prescription; and so distinct and separate did he consider the rule, that when treating of the prescription *qui resulte de la possession*, he says, 'The prescription of which we treat at present has *nothing in common but the name* with that which forms the subject of a chapter in our treatise of Obligations.' Yet the terms *positive* and *negative* might have served to distinguish and characterise the rules just as well as in Scotland. In the code of England, too, the rules, though imperfectly modified and capriciously distributed, seem scarcely to fall under the one category of negative: There is the English law of *prescription by immemorial usage*,

'*ex usu et tempore substantiam capiens ab auctoritate legis*,'—which, observes Mr. Cruise, 'may be termed a *positive* prescription.' The same author adds: 'The *second sort* of prescription is that which arises from the several statutes of limitation, in consequence of which no action can be brought for the recovery of lands and tenements after an uninterrupted possession of a certain number of years. It is different from the former prescription, for by that a right is acquired to an incorporeal hereditament; but by this last kind, the remedy for the recovery, either of a corporeal or incorporeal hereditament, is taken away, from whence it may be called *negative* prescription.'

"It was Scotch lawyers, however, who, in their pleadings, first introduced, and somewhat loosely, the terms negative and positive prescription. But this was not until the statute 1617, which established the distinction with us, was in full operation; and, it would seem, subsequent to the time of Lord Stair and Sir George Mackenzie. Neither of these great lawyers, in any of their works, make use of this now familiar phraseology, nor does it occur, so far as I can discover, in the reports or collections of their day.

"But although the framers of the act 1617 appear to have been occupied rather with the municipal adaptation, than the philosophical distinction and nomenclature of the law of prescription, they practically arranged its operation upon those two separate modes of propounding the plea which Lord Stair did not fail pointedly to distinguish. Nowhere, indeed, does he speak of positive and negative prescription; but the following passage of his institutes involves the idea, and may possibly have suggested the distinctive terms to the lawyers who came after him.

"'Prescription hath a *two-fold* consideration. The one is, as it excludes all title and action upon rights, if there hath been neither possession nor process within forty years, and therefore may be proponed *negated*, without alleging forty years' possession in the defender, and so it proves itself unless the pursuer propound interruption, which doth elude the prescription. The other consideration of Prescription is as it establisheth and completeth a right by forty years' possession, uninterrupted; and, being so proponed, the possession must be proved to have been so long.'

Enough has been shewn, we trust, to give fair notice of Mr. Napier's work, which we consider to be one of great learning and research.

#### STAMP ON TRANSFER OF A MORTGAGE ON LEASEHOLDS.

Sir,

It is, I believe, good law that an assignment of a policy of insurance of a life in a mortgage of leaseholds, with a power to the mortgagee, in default of payment of the yearly premium by the mortgagor, to pay such premiums and to

charge the same, with interest on the mortgaged premises, makes the mortgage deed a security without limit, and therefore liable to a stamp duty of 25*l*. To obviate this inconvenience it is usual to insert a proviso in the mortgage that the principal moneys thereby secured shall not exceed a given sum, being an amount larger than the actual loan, sufficient to cover the advances by the mortgagee for payment of the premiums on the policy of assurance, and to stamp the deed with the *ad valorem* for such larger amount.

The transfer duty on mortgages is 1*l*. 15*s*., and in transfers of securities of the description to which I have above referred it is usual to insert all the covenants and powers contained in the original mortgage.

Now, sir, out of these premises the following question has arisen in my practice; and as it is a point which may be of frequent occurrence, perhaps some of your learned correspondents may think it worth a little investigation.

First. Whether or not in a transfer of a mortgage of leaseholds for lives, such transfer containing a power to the mortgagee to pay the premiums on a life assurance and to charge them with interest on the mortgaged premises, and such power being only a repetition of the power contained in the original mortgage, such transfer is thereby rendered liable to any further duty than the 1*l*. 15*s*.?

And secondly, whether or not, if such transfer be liable to any further or other duty, the insertion therein of a declaration stating that "the several covenants and powers herein contained are not to be taken or construed as new or accumulative to the like covenants and powers in the said recited indenture of mortgage contained, but are intended between the said parties hereto to be in continuance and corroboration of the same respectively," will be a sufficient qualification and explanation of the powers and covenants in such transfer to render the 1*l*. 15*s*. stamp sufficient? T. S.

#### ELECTIVE FRANCHISE.— SOLICITORS' OFFICES.

On the question "whether the occupier of a solicitor's office, rented at 50*l*. a year, is entitled to vote for the county," (*ante*, p. 204), it may be observed, that by section 20 of the English Reform Act, "every male person of full age, and not subject to any legal incapacity, who shall occupy as tenant, any lands or tenements, for which he shall be *bond fide* liable to a yearly rent of not less than 50*l*., shall be entitled to vote in the election of a knight of the shire for the county."

By section 25 "notwithstanding any thing hereinbefore contained, no person shall be entitled to vote in the election of a knight, in respect of his estate or interest as such tenant and occupier as aforesaid, in any house, warehouse, counting-house, shop, or other building, being of such value as would, according to the provisions hereinafter contained, confer on him

or on any other person, the right of voting for any city or borough."

By section 27, "in every city or borough which shall return a member, every male person of full age, and not subject to any legal incapacity, who shall occupy within such city or borough, as owner or tenant, any house, warehouse, counting-house, shop, or other building, being of the clear yearly value of not less than 10*l*., shall be entitled to vote for such city or borough."

Is a solicitor's office a tenement? Blackstone says, "tenement, is a word of greater extent than land, and though in its vulgar acceptation, it is only applied to houses and other buildings, yet, in its original, proper, and legal sense, it signifies every thing that may be holden, provided it be of a permanent nature; whether it be of a substantial and sensible, or of an unsubstantial ideal kind." By section 20, therefore, the occupier of a solicitor's office, rented at 50*l*., is entitled to vote for a county.

Section 25, however, would disfranchise him, if a solicitor's office be "a house, warehouse, counting-house, shop, or other building," of the yearly value of 10*l*.

Under section 27, it has been held, that a solicitor's office is not "a house, warehouse, counting-house, shop, or other building." 1*l*. O. Vols. 16 & 17.

Therefore, the occupier of a solicitor's office, rented at 50*l*., although situate in a city or borough, is entitled to vote for the county.

Q. E. D.

Section 25 would have been unnecessary, if a house, warehouse, counting-house, shop, or other building, did not constitute a tenement.

#### ON THE PROPOSED DISTINCTIONS AT THE EXAMINATION OF ATTORNEYS.

We subjoin some letters regarding the proposed distinctions to be conferred on candidates who display a superior degree of legal knowledge at the examination. The subject was very much discussed two or three years ago. We think that the candidates need not apprehend a very speedy alteration of the plan which has been hitherto found to work well. Before the proposition can be entertained, we presume the tests of proficiency, and the manner in which the distinction is to be conferred, must be precisely stated. Until those who are interested in the subject can agree in these particulars we do not see how the subject can be regularly taken up. When it has been ascertained that the change is desirable, and its nature has been defined, the next step will be to submit the proposition to the Examiners, for it is not likely that the Judges will impose the additional trouble and serious responsibility upon the

Examiners, unless they are willing to undertake it. In any future letters which may be sent us, we beg that the precise nature of the proposed alteration be stated.

*To the Editor of the Legal Observer.*

Sir,

I perceive from the contents of your last Number, that an advocate for legal distinctions is again in the field; armed with fallacies and encouraging himself with a strange contempt for all opposition,—nay, absolutely oblivious to the fact of there having been opponents to the measure, or the possibility of any such arising.

It is but a short time since the merits of the proposed change were discussed in your Journal with the accustomed liberality on your part towards both sides; yet your correspondent asserts that *no one* disputes the benefit of a change, and while his letter is but an attempt to answer the arguments of the opposition, he bewails that *no opponents* are to be found. Even if they existed, so clearly beneficial is his plan, that every effort is to be directed to its consummation,—no objections to it regarded, and lest (it is presumed) the attempt should prove unfavourable to his scheme—no opponent convinced. His cry is for legal distinction. This, he says, will be a change, and if not eagerly embraced by the profession, he raises the old clamour that the profession is averse to all change, and possessing a most deeply-rooted prejudice to any amendment. It will be a change, we are told, and therefore ought to be adopted, and opponents disregarded or trampled under foot.

The alteration he proposes has been listened to and discussed in your Journal. Truly my able companions in the opposition may well be gratified at having laid their antagonist low, and though he arises, yet little more than invective is the return he makes to the well-aimed arguments they have directed at his specious scheme.

It is, I admit, of the greatest importance that attorneys should be thoroughly qualified; but does your correspondent imagine this can be obtained by distinguishing those who have shewn much knowledge of the law. Is law the only requisite to constitute an honourable solicitor? I hope this idea has been refuted by the work quoted, 15 L. O., 296. The present examination is amply sufficient to place men on the roll who will at least not disgrace their profession by *ignorance* of the law.

Without discussing the question of the superiority of attorneys to divines, which is hinted at, I would ask what have distinctions to do with *attorneys*? I thought they were to be bestowed upon *candidates for that office*. How is it possible to classify attorneys with the various qualifications which the different stations they occupy may render necessary. Why complain of want of distinction among them? A legal examination will not clearly point them out (at least ought not), to “clients in search of attorneys?” The real distinction of an at-

torney is the esteem and confidence of his client, and an honourable standing in his own profession. I would ask, are these no inducement to a display of merit, or exertion of abilities? Is a medal or a book bestowed for excellence in a *part* of his requisite attainments, more alluring than praise and reward for the *whole*? True worth will soon elevate him above the tribe referred to. No one mistakes a respectable attorney for a knavish one.

Our profession is by no means destitute of rewards to its talented members. If an attorney pant for distinction, the bar is ready to receive him,—whence he may even reach the Bench.

These are some of the honours of our profession, but they are not gained by a cursory or even strict *examination*, but by the exhibition of actually tried talents: not by the *shadow* of things to come, but things themselves. Honours are distributed at the Bar with much impartiality, and are earned by *actual* not *presumed* qualifications. May I long have ceased to care for such things when the Bar shall, by a legal examination of its members, stimulated by honours granted before their real merits as advocates have been tried, be degraded into mere *lawyers*, fettered by the maxims of the law, desiring and striving only to know what the law *is*, without considering, or even with minds enlarged enough to know or care, what the law *should be*.

Emulation is truly a most powerful stimulant, but if allowed to exert its power upon candidates for admission we should have lawyers certainly, but should we have an increase of men with minds capable of the complex duties of the profession? If an intimate knowledge of “law’s dark byeways” were necessary to obtain a standing in the profession, emulation, nay, *necessity*, would urge the whole body to its study, and attorneys would degenerate into men who had gained great legal knowledge, but purchased in the greater number of instances by a neglect of all those important qualifications which should be the true distinction of the profession.

It is said no harm can arise in publishing degrees of legal merit; but, let it be understood that which might distinguish the *student*, is intended to elevate him in the eyes of the world when an *attorney* above his brethren, nay, his fathers of standing in the profession. It is, in short, intended to be, or will be an advertisement, and the world will be led to conclude that because a particular individual has shewn himself a *lawyer*, therefore he is more to be trusted as an *attorney*. A distinction like the one proposed, would be easily mistaken for a testimony by the Examiners of his perfect fitness for the arduous duties his client may require him to perform. In short, inasmuch as integrity, sound judgment, and scientific knowledge constitute the true distinctions of a valuable attorney, nothing short of classification pointing out these as well as a knowledge of the law, can prove beneficial either to the profession or the community.

It must be admitted that it would be a hard

measure upon those who obtained no degree though they have passed and are qualified to act. Now, who may they be? Several of them may be men of great general knowledge and sound judgment; and as these valuable acquisitions cost them time in obtaining, they might have known only sufficient law to direct their other attainments for their client's benefit and their own reward. Yet under this detestable plan of granting and publishing degrees of merit, these, though eminently qualified to be the ornaments of the profession, are to be damned at entering it by the absence of a degree,—a distinction to be obtained only by casting away rich stores of wisdom and experience, to be replaced by a deep knowledge of law—of no use to them—no benefit to their clients. Your correspondent sees no hardship in degrading these who would be far superior as men (and would have been as attorneys) to the distinguished attorney, of whom nothing more can be said, than that he knows what is law.

It may help the judgment of those who desire the change, if they will consider that their opponents do not object to *attornies* having the rewards justly due to them, viz., the confidence of their clients, and sometimes the representation of a borough, and so forth; they do not think these harsh upon those who have them not, but they would strenuously oppose a system which elevates before it has obtained a correct estimate of their fitness. The rewards of the *attorney* should be like those of the soldier—what he has earned in the actual duties of his profession, and not an appendage to his skill at a riding school. The distinction of the *student* is attempted to be published as a testimony of his merit as an *attorney*,—whereas the former raises but the hope of, and is not that which is expected to follow.

Your correspondent would have us all *deep lawyers*, and complains that his legal abilities are curtailed to satisfy others. This is not the fact: after having passed, he may devote himself to an increased attention to that which he finds will be of most use to him; and be what kind of a lawyer himself or his clients may wish or require. I have no wish to shorten his own legs, but I protest against the limbs of others being stretched till they equal his own. We have not meddled with him—it is himself that wishes to substitute for valuable acquirements dry legal lumber.

A word to him at parting. His chance of distinction, he says, is over. He has no temptation to exert his abilities. Dark and dreary is his path. The great charm of his professional existence is gone for ever. His legal sweetness has been inhaled only by the Examiners, and now because he cannot be a meritorious student, his modesty would lead him to suppose he cannot be a distinguished attorney. It would appear his deep knowledge of law, in his own estimation, stands in his way. It is not wanted. It might have earned him a book, a medal, but he fears if it will ever earn for him the distinction an attorney hopes for. Let him take courage—having

mastered the law, he has everything to hope for, if he will apply to the pursuit of the other necessary qualifications. His withered joys may yet be revived; and if he be persuaded of this by my humble endeavours, I lay down my pen fully satisfied it has not been used in vain. G. H.

Sir,

Your correspondent "A Country Solicitor," on this subject, must have forgotten what occurred two years ago; that although he, with several other gentlemen, advocated this radical scheme; it was, not only by yourself, but by several of your correspondents opposed, myself included. The reasons which were urged I shall not repeat, but would certainly request the favour of your correspondent to read them over, if he has not done so.

The general form of his arguments, the ornamental, and in some parts the affecting manner of the composition, seem more fit for recital before a tasteful and tender-minded jury, who (no imputation against their good intentions) generally pay more attention to forensic eloquence, the usual cloak of a bad case, than to the real facts when simply stated, and submitted to the inspection of lawyers who must decide that they do not come up to the point in question. An argument, to be *convincing*, should be plain; to be pleasing, may be similar to that of your correspondent.

I do not wish to enter into any argument with "A Country Solicitor" at present. I merely wish him to consider a few plain facts. He brings as examples for our imitation, the divine, the student of medicine, the soldier or sailor. Is he aware that in all those cases each person may, if not at the first trial, at others, obtain equal honors? Does not he see, at the same time, that as attornies are only examined once, they cannot have the same chance? Is he not sufficiently cognizant of practice to know, that such honours, if obtained, would be of little or no use to him in such practice, any more than similar honours obtained at school, unless such honours would confer a degree equal, in point of public estimation, to those obtained by divines or medical students? Is he not aware that the Examiners, however willing, have no power to grant degrees? And is he sure the Judges would think it advisable to invest the Examiners with a power to become, in effect, a College of Law, to grant degrees? Should your correspondent think it worth his while to rebut the presumption which must arise on a *fair* answer to these questions, I shall be ready with my *surrebutler* whenever occasion shall require. D. H. S.

#### SELECTIONS FROM CORRESPONDENCE.

##### ACCOMMODATION FOR ATTORNIES IN THE COURTS OF JUSTICE.

WITH regard to the admission of attornies to the Central Criminal Court, it is to be regretted that they should at any time experience a



refusal at the doors; though from the great interest excited by the trials of eminent criminals, it is difficult where to fix the limit of admission.

The two sheriffs (by custom) have the control of the arrangements of the Court, and the maintenance of decorum therein; one of these gentlemen is a *solicitor*. The two undersheriffs are also *solicitors*, and would no doubt afford facilities to their professional brethren in obtaining admission to the Court.

The City Lands Committee of the Corporation have a box in each Court, of which each member is provided with a key. It happens there are six members of the profession (*solicitors*) upon this Committee, who would, I dare say, be happy to lend their keys to their professional brethren when requested. CIVIS.

#### NON-PAYMENT AND NON-RETURN OF COUNSEL'S FEES.

Sir,

I have perused the letter, signed by "a Barrister," p. 184, *ante*, with bitter complaints of what I should hope is not a very frequent practice, namely, omitting to pay the fees of counsel.

I am induced to request you will also call the attention of the public to a much more shameful practice,—that is, taking briefs with fees, and then neglecting the cause, and declining to return the fee. I need only allude to the complaint which was recently brought before the House of Commons the other day, and which shews a much more grievous injury than the mere non-payment of a fee.\* Every one is subject to the loss of a debt, however incurred, and there is no reason why one branch of the profession should complain of the loss of his fees more than the other. Both branches are doubtless great sufferers. No one can justify the nonpayment of the fees of a barrister, and he has only to make it known and a solicitor who so acts would at once incur the odium and reproach of his brethren. A.

### SUPERIOR COURTS.

#### Vice Chancellor's Court.

##### WILL.—CONSTRUCTION.—CLEAR GIFT.— IMPLICATION.

*A bequest of the income of the residue of a testator's property of what kind soever to his wife for life, subject to certain weekly payments, and after her death to his son for his life, if he should survive her, with an expression of a desire that the son should enjoy absolutely all the residue, except money in the funds, which the testator wished to be divided, on the death of his wife, among the children of his son, on their attaining twenty-one: Held, that on*

*the death of the wife, the son took for his life all the residue, including the money in the funds.*

Benjamin Bell, who died in June 1832, leaving his wife, Anne Bell, her sister, Fanny Sparshatt, his son, Henry Bell, and four children of the said Henry surviving him, and a large sum vested in the funds, by his will, dated March 1832, devised and bequeathed as follows:—"All the rest and residue of my property that I shall die possessed of where-soever it may be, whether mortgages, funded property, freehold, copyhold, or leasehold lands, bills, notes, or other securities, I give, devise, and bequeath unto William Thorp and Deodatus Eaton, their heirs, executors, administrators and assigns, respectively upon trust, that they or the survivors of them do and shall see it applied to the following intents and uses; that is to say, after payment thereof of my debts, funeral and testamentary expenses, it is my desire that so long as my dear wife, Mary Bell, shall live, she shall enjoy the full annual interest or income arising out of my said residuary property, subject to the deduction and payment thereof of the sum of 13*s.* per week to my sister, Fanny Sparshatt, to be paid quarterly to my said sister as long as she shall live, and it is my will that my said wife shall also, at her expense, find and provide a lodging for my said sister during her life; and that my dear wife shall out of the annual income hereby given to her pay and allot the sum of 12*s.* per week to my son, Henry Bell, by quarterly payments; and in case of his death, shall appropriate the like sum of 12*s.* weekly, to be paid quarterly as aforesaid, towards the maintenance of his children. At the decease of my dear wife my desire is that my son, Henry Bell, shall enjoy for his life, if he survive my wife, the full annual interest arising out of my said residuary property, but subject, nevertheless, to the deduction thereof by my said trustees, or the survivor of them, of the said weekly sum of 13*s.* to be paid quarterly as aforesaid to my said sister Fanny Sparshatt, if then living, for the remainder of her life. It is my further desire that my son, Henry Bell, shall have the absolute use and enjoyment of all the property I shall die possessed of, saving and excepting all such sum and sums of money as shall be vested in the funds at the time of my decease; and my will and desire is that such money in the funds shall, after the decease of my said wife and sister, be divided equally amongst the four children of my son, Henry Bell, namely, Fanny, Caroline Brunswick, Benjamin and Henry Bell, as they shall respectively attain the age of twenty-one years, with the usual benefit of survivorship, and that until they attain the age of twenty-one the interest of their respective shares shall be applied for their several benefit. It is further my desire that after the decease of my sister, Fanny Sparshatt, 100*l.* shall be divided in equal proportions amongst such of the children of my brother as shall be living at the time of my sister's decease, such 100*l.* to be taken out of the pro-

[\* On this subject we refer to the admirable letter at the commencement of No. 537; p. 209, *ante*. Ed.]

perly hereby given to my son, Henry Bell, and not out of the property in the funds at my decease." The testator's wife having died in 1836, and his sister, Fanny Sparshatt, in 1838, the four children of the son, Henry Bell, filed this bill against him and the two trustees, Thorp and Eaton, for the purpose of obtaining the opinion of the Court on the said residuary clause in the will, and it prayed that certain sums vested in the funds, and constituting the residuary estate, might be secured for the benefit of the plaintiffs, and that it might be declared that the interest of their father therein had ceased on the death of Fanny Sparshatt. The question raised in the pleadings was, whether the father took a life interest in the dividends of the stocks, or the capital became immediately divisible amongst his children on the death of the survivor of Mrs. Bell and Fanny Sparshatt.

Mr. Jacob and Mr. Metcalfe were for the plaintiffs; Mr. Knight Bruce and Mr. T. S. Clarke were for the defendant, Henry Bell; and Mr. Holloway was for the other defendants, the trustees. Among the cases cited were *Graves v. Hicks*,<sup>a</sup> *Younge v. Berdett*,<sup>b</sup> and *Overend v. Gurney*.<sup>c</sup>

The Vice Chancellor said, it appeared to him, that the testator made his will upon the supposition that his sister, Fanny Sparshatt, would die first, and then his wife, and then his son. If his Honor were to put on the will the construction sought for by the plaintiffs, such construction would, had the circumstances of the case turned out otherwise than as they did, have the effect of making the testator die intestate as to part of his property. Upon the last clause of the will, where the testator declared his future desire to be that after the decease of his sister, Fanny Sparshatt, 100*l.* should be equally divided amongst such of the children of his brother, John Bell, as should be living at the time of his sister's decease, none of such children could possibly have been entitled to any part of the 100*l.* during the life of testator's wife. The rule of construction of wills was, where you find a clear and positive gift, such gift shall not be revoked by any subsequent implication in the will. The words of the will that "such money in the funds shall after the decease of my said wife and sister be equally divided amongst the four children of my son, Henry Bell," clearly meant to include the death of his son Henry Bell; for the testator in the first part of the will gave to his wife the whole income of his property for her life, and then upon her decease he gave the entire interest of his property to his son, Henry Bell, for life, and it was not until the death of Fanny Sparshatt that this farther clause of the will came into operation, viz. "that my son Henry Bell shall have the absolute use and enjoyment of all the property I shall die possessed of, saving and excepting all such sum and sums of money as shall be vested in the funds at the time of my decease."

Taking together the general tenor of the whole instrument, with the rule that a preceding clear unambiguous gift shall not be cut down by a subsequent implied one, his Honor could arrive at no other conclusion than that the defendant, Henry Bell, became entitled, upon the death of Fanny Sparshatt, to the whole interest of the funded property for his life, and he declared accordingly. *Bell v. Bell*.—At Westminster, Trinity Term, 1839.

### Queen's Bench.

[Before the Four Judges.]

WITNESS.—CHANCERY PRACTICE.—FEES.

*The order of Lord Chancellor Hardwicke, directing that reasonable fees shall be paid to the officers of the Court of Chancery attending on subpoena in other Courts to produce rolls from the Court of Chancery, is a valid order.*

*The Senior Clerk of the Petty Bag Office, when required to attend and produce the rolls kept at his office, is entitled to such fee.*

*He may maintain an action for it, and may do so though he does not attend in person, and though the party requiring the production of the rolls had no notice that such fee was demandable.*

This was an action for fees due to the plaintiff as Clerk of the Petty Bag Office, in respect of sums of money paid for expenses, and also for loss of time in attending as a witness on a subpoena. The plaintiff was the Senior Clerk of the Petty Bag Office, and the defendant had been defendant in a former action, in which he had required the production of the roll of attorneys which is kept at the Office, and is under the jurisdiction of the Master of the Rolls. For that purpose he subpoenaed the present plaintiff. He was then informed that it was necessary he should petition the Master of the Rolls for permission to have the attorneys' roll produced. The petition was granted, and a person attended from the Petty Bag Office with the roll. The plaintiff did not attend in person. The plaintiff, who had been paid one guinea for attendance, now claimed one guinea a day for attendance beyond the first day. At the trial of the cause before Mr. Justice Littleale, it was proved that the course pursued in the present instance was the usual course, and that whatever clerk attended from the office, the same fees were paid, and that they were ultimately handed over to the plaintiff. It was submitted that the plaintiff was not entitled to recover; first, because though the master of the Rolls had a right if he thought fit to refuse permission for the production of the document, yet as soon as he had given the order, the person producing it was only discharging a public duty, and was not entitled to charge for his loss of time. *Collins v. Godefroy*<sup>a</sup> was cited, where an attorney who had attended on a subpoena as a

<sup>a</sup> 6 Sim. 391; S. C. 1 Clark & Finn. 20.

<sup>b</sup> 5 Bro. P. Cas. 54.

<sup>c</sup> 7 Sim. 128.

<sup>a</sup> 1 Barn & Ald. 950.

witness in a civil suit, was held not entitled to maintain an action against the party, who subpoenaed him for compensation for loss of time, and an express promise there made was held to have been made without consideration. It was further objected that this party could not maintain the action, as he was not the party who in fact attended the trial. The learned judge, however, overruled the objections, and the plaintiff had a verdict. A rule had been obtained to set aside the verdict, and enter a nonsuit.

Sir F. Pollock, and Mr. Hoggins, in Easter Term last, shewed cause. There is no occasion to impugn the authority of *Collins v. Godefroy*; that only lays down the principle that a man may be obliged to attend to give evidence without claiming compensation for his loss of time, but that does not affect the case of a witness, who attends at considerable trouble and expense to himself, to produce papers and documents. There must be many exceptions to the general rule. A banker and all his clerks could not be called on to attend with the banking books, without remuneration; nor could a man command the attendance of a physician or a surgeon, or a lawyer, to give evidence on matters of science, connected with their respective professions, without their being entitled to compensation for their loss of time.<sup>b</sup> Suppose he refused to attend, the court would not grant an attachment against him. Here is a public officer, having the custody of certain public documents: he is paid, not by a salary, but by fees. Surely, then, he is entitled to a fee for the production of those documents. Lord Chancellor Hardwicke made a table of fees for the officers of the court,—one of which was for attending with any record out of the office. The clerk attending is to be paid a reasonable fee, according to the time of such attendance. The report of the Commissioners “on the duties, salaries and emoluments, of the officers of courts of justice” ordered to be printed on the 6th June, 1816, states that the Clerk of the Petty Bag Office has no salary, but is paid by fees according to the order of Lord Hardwicke. The amount here was proved, within the words of that order, to be reasonable. It was also shewn to have been the usual fee received for above fifty years. The order to attend, made on petition, did not put an end to the plaintiff's right to a fee. Suppose he had been told by the defendant that no fee would be paid, can it be doubted that the order for his attendance, either would not have been given, or would have been rescinded? The order for the allowance of the fee must be considered to be incorporated with the order for the attendance. Then if the fee was a legal and reasonable fee, is not the plaintiff the person entitled to it? He is just as much so as the officer of this Court is entitled to a fee for swearing a man to the

contents of an affidavit. The distinction between this plaintiff and a witness, to whom the case of *Collins v. Godefroy* would apply, is, that this plaintiff is a witness, who is not called to speak of any thing within his own personal knowledge, but to produce a document, of which he happens to have the custody.

Mr. Kelly, in support of the rule.—The plaintiff has already received one guinea for attendance, and 12s. for the order to attend: he is not entitled to more. The usage of the office will not make the law any more than the usage of attorneys will do so. The custom to pay an attorney a guinea a-day for each day of attendance had been quite as long in existence before the case of *Collins v. Godefroy*, as the usage of this office; yet there the Court held that the fee thus claimed could not be recovered. The principle is, that the giving of evidence is a public duty which each man must perform, as each man may in turn require it be performed for him. The attendance of jurymen is regulated upon the same principle. There is no distinction between the case of scientific men and ordinary persons. What is the action here? It is in the form of work and labour of the plaintiff, and attendance with books, &c., before that time, done and bestowed by the plaintiff as such senior clerk. [Mr. Justice Coleridge.—Then it is in fact an action for fees, for duty done in his office.—Mr. Justice Littledale.—There is a common count for other work and labour, and for money paid.] It may be taken for granted that the Lord Chancellor or the Master of the Rolls had a right to refuse the attendance of the plaintiff; but when permission is given, and a document, placed in a particular custody, is by the proper authority ordered to be produced, no right to demand a fee arises in consequence of obedience to that order. The Master of the Rolls may refuse the application, or may clog it with a condition; but if granted by him without a condition, the witness himself has no right to impose a condition on it. [Mr. Justice Coleridge.—If the Master of the Rolls has a right to make a particular order for payment, may not this general order be considered as incorporating that particular order within it?] Not unless notice of such incorporation was given to the party to be affected by it. This is a public document, the production of which cannot be prevented by an order for payment in this manner. Such a condition even the Court of Chancery would not impose. But even if the granting of the petition could be clogged with such a condition, the party must have notice of it, and then it would come to be a question whether such condition was lawful. He ought at least to know before-hand, the condition on which alone he was to derive any benefit from his petition. [Lord Denman. He might then rather waive the production of the document than pay the fee.] He might. On accepting the subpoena, the present plaintiff made himself liable to all the duties of an ordinary witness. Even had there been an express contract to pay him for his attendance, such contract would have been void, on the ground that it was without consideration, the

<sup>b</sup> Yet, in *Collins v. Godefroy*, the plaintiff must have been subpoenaed for that very purpose, for the action in which he had been required to attend as a witness, was against Godefroy, for unskilfulness and negligence as an attorney.

attending to give evidence being a matter of public duty. This was the doctrine adopted by the Court in *Collins v. Godefroy*. The present case in principle resembles that of a promise made to a mariner during a storm to give him extra wages, by way of stimulating him to use his utmost exertions to save the vessel. Such a promise has been held void in law. As to the second objection, it is clear that this action is not maintainable. It is brought by the plaintiff as the Senior Clerk of the Petty Bag Office for journeys, attendances, &c. before then performed by him. The plaintiff does not say performed by him, his servant or agent. If in such a case there can be any contract at all, it must be with the person who really attended. *Samuel v. Davis*,<sup>c</sup> was an action against a defendant for disobedience to a *subpoena duces tecum*, by which he had been required to produce a warrant. The warrant was not in his, but in his partner's hands, and the partner had attended, but had not produced it, having only been served with the ordinary subpoena. It was held that the action would not lie, for that the person who actually had the document was the person who had attended. The converse of that case is the present; so that if any person could maintain this action, it would be the clerk who did attend.

*Cur. adv. vult.*

Lord Denman, C. J., in Trinity Term delivered his judgment.—After stating the facts, his Lordship observed, *Collins v. Godefroy* was said to govern the present case, and it was also argued that a positive promise to pay made no difference, and that Lord Hardwicke had no right to impose the payment of fees as a condition on the attendance of a witness with any document from his court; but that if he had such right, then that the party applying for the attendance of a witness was entitled to have notice of the condition, and not having had such notice, was not considered as bound by the condition. It was further contended, that the plaintiff himself not having personally attended to produce the rolls, was not entitled to recover; and this argument was applied even under the presumption that the order of the Court of Chancery which directed the payment of the fees was valid. Now taking the first objection, we think that the rolls cannot be taken from the Court of Chancery, upon the mere service of a *subpoena duces tecum* on an officer of that court. There must first of all be an order of the Master of the Rolls for the purpose. The Master of the Rolls would not suffer any one to carry them out, without there being some payment made for the trouble and attendance of the person who took them to court; and whether Lord Hardwicke had a right to constitute a table of fees or not as a general rule, yet, as the production of the document was not a matter of right, but rested on a special permission, we think that the party requiring the document was bound to pay the reasonable fees directed by those who had the power of withholding the permission. This matter of the power of the court, is stated in Beames' Orders of the Court

of Chancery, p. 404; and we concur with the statement. The obligation to attend the court out of which the subpoena issues, undoubtedly arises from the subpoena itself; but that is served on a person, who in the ordinary course of things, is not bound to produce the required document, and who indeed possesses no power to do so, but by the permission of the Lord Chancellor or the Master of the Rolls. We think, therefore, that the order of Lord Chancellor Hardwicke was a valid and binding order, being made in the matter over which he had jurisdiction. We think that it is not necessary that the party should have had notice of that order. If the defendant, instead of applying as he might have done, for an examined copy of the rolls, chose to apply for the production of the rolls themselves, he must be taken to be cognisant of the practice with regard to their production. Then, as to the other objection, the duty of producing the record was cast upon the defendant, but there was nothing requiring him personally to attend at its production. But the fee became due to the plaintiff whoever attended, for the custody of the rolls is especially given to the office of the Petty Bag, and the senior clerk there was responsible for them. Without therefore at all impeaching the case of *Collins v. Godefroy*, we think that it is not applicable here, that the verdict was right, and that the rule which has been obtained must be discharged.

Rule discharged.—*Bentall v. Sidney*, T. T. 1839. Q. B. F. J.

## LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

### Royal Assents—29th July.

Indemnity Act. Bills of Exchange.  
Turnpike Acts continuance.  
Small Debt Courts for Pontefract, Aberford, Glossop, Grantham, Rochdale, Rotherham, Warrington.

### House of Lords.

To amend the jurisdiction for the Trial of Election Petitions. [In Committee.]  
To amend the Law touching Letters Patent for Inventions. [In Committee.]  
To amend the Law relating to the Custody of Infants. [For third reading.]  
To amend the Law relating to double and treble Costs. [For second reading.]  
To regulate the Proceedings in the Stannary Courts. [For third reading.]  
To regulate the Metropolis Police. [In Select Committee.]  
For registration of Births, &c. [For second reading.]  
To regulate the City Police. [In Committee.]  
For Holding Assize Courts. [In Committee.]  
For the Reduction of the Postage Duties. [For second reading.]  
For amending the Highway Act.

### Bills passed.

Imprisonment for Debt Amendment Act.  
Small Debt Court Bills for Belper, Chesterfield, Eckington, Hatfield, Newark, Nottingham, Oldham, Wirksworth.

<sup>c</sup> Not reported.

**House of Commons.**

To regulate and enlarge the Summary Jurisdiction of Justices. Lord John Russell.

[In Committee.]

Small Debts Court Bills No. 2, for the following places:—Kingsbridge and Dodbrooke, Leeds, Liskeard, Liverpool, Newton Abbot, Tavistock, West Ham.

To abolish Grand Juries. Mr. Pryme.

For regulating the High Court of Admiralty.

[In Committee.]

For the registration of Parliamentary Electors.

[In Committee.] Mr. Attorney General.

Controverted Elections. Lord Mahon.

[For 2d reading.]

To alter and amend the Laws relating to Sewers.

[In Committee.] Mr. Christopher.

For relieving Poor Persons from Rates.

[For 2d. reading.]

For regulating the Metropolitan Police Courts.

[In Committee.]

For amending the Tithes Commutation Act.

[In Committee.]

**Bills passed.**

Postage Reduction. Bury Small Debts Court.

**THE NEW SMALL DEBT COURTS.**

It will be observed by the above list of Law Bills, that the Royal Assent has been given to no less than seven bills for establishing small Local Courts, and that eight others having been brought from the Commons, have passed the House of Lords, and will of course also receive the Royal Assent. Several others remain before the respective houses in different stages of their progress.

The County Courts Bill having been lately withdrawn, these numerous bills have been pressed forward. We shall, as soon as the acts are printed, notice the extent of jurisdiction of each of them; and it may be well for the profession to consider whether one general bill will not be preferable to this piece-meal legislation, the effect of which will be, we fear, very prejudicial to the due administration of justice.

**MISCELLANEA.**

**POINTS OF LAW, 1650.**

THE following extracts are made from a little book by J. Jones, Gent., called "Judges judged, with eight observable Points of Law."

"1. Counties and sheriffs turns, were ancient Courts in the time of King Arthur, and before, and in the turns were tried all pleas of the Crown; and in the counties all common pleas under forty shillings without writ; and above, to any value with writs, according to the law maxin, *Quod placita de Catallis, debitis, &c. quæ summam 40s. attingunt, vel excedunt secundum legem et consuetudinem Angliæ, sine brevi Regis placitari non debent.* See the Lord Coke upon the 35th Chapter of Magna Charta; and upon the statute of Gloucester, fol. 310 & 312. Hundreds and court barons have the same power and rights, and neither sheriffs nor stewards are judges, but suitors

only, fol. 312. And so all men were to have law and justice at home, cheap and near, and not to fetch it from Westminster, far and dear. And the conservators, otherwise called guardians of the peace, before Magna Charta, and since, had all necessary power, to govern their counties in peace, and to execute all laws conducing thereunto, and to command the power of their counties to assist them; and were chosen (as all other officers of peace and trust were) by their counties, as the Lord Coke affirmeth.

"2. As superiour courts ought not to incroach upon inferiour, so the inferiour ought not to defraud the superiour, of those causes that belong to them: *viz.*, neither ought a man be sued in any court of record for debt not amounting to 40*s.* by way of *mutuatus*, and other lawless tricks daily used by attorneys; nor in any inferiour court for debt of 40 shillings, or exceeding, by dividing it into actions under 40 shillings. In which cases the defendant ought to be admitted to plead to the jurisdiction of the court, and to have a prohibition to stay the suit: see the Lord Coke, upon the Stat. of Gloucester, fol. 311. And all Courts were to dismiss all actions entered without sufficient bail to prosecute, answerable for costs and damages. If non-suited, or cast; and not *Jo. Do.* and *Rich. Ro.* as is used. See F. H. Just. P. the Register, and *Fitz. H. Nat. Brevium* at large. And no court of record was to proceed in any action of debt, before the plaintiff swore his said debt to be 40*s.* or more, and his damage in trespass to be so much out at least: And if battery, that he was beaten indeed, to his uncurable hurt to that value. See the Stat. of Gloucester, and the Lord Coke upon it, with his reason for the discontinuance of this practice"

**THE EDITOR'S LETTER BOX.**

It will be observed that the *Penny Postage* Bill has passed the House of Commons, and is proceeding rapidly in the House of Lords. We shall lose no time in making the necessary arrangements for supplying the Legal Observer to its country readers through the post. Subscribers and Booksellers will, of course, give their orders accordingly.

Letter III. on the state of the Bench and the Bar, will be published in our next Number.

Our arrangements do not permit us to avail ourselves of the offer of "A Sketcher," though we doubt not the merit of the articles proposed.

We recommend "A Constant Reader" to apply at the chambers of the Treasurer of Serjeant's Inn, Chancery Lane, for the information he requires regarding the Serjeant at Law who was made a Judge at the beginning of the 17th century.

The communications of W. C. J.; G. P. and D. H. S. shall appear in our next.

The Quarterly Digest of all Reported Cases will be published next Saturday.

*Erratum*, p. 229, for "1 & 2 Vict. c. 29," read "2 & 3 Vict. c. 29."

# The Legal Observer.

SATURDAY, AUGUST 10, 1839.

— "Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## LETTERS TO THE EDITOR, ON THE STATE OF THE BENCH AND THE BAR.

### LETTER III.

#### ON PRACTISING IN TWO COURTS AT ONCE.

Sir,

My last letter related to the practice of a counsel taking a brief in a cause, and being absent from the Court when the cause came on for trial. I have not yet done with this subject, and, with your permission, I will devote another letter to its consideration. I have detailed to you the grievances of poor Tomkins, and I then promised to suggest a remedy for his and similar cases; for I regret to say that the complaints as to this kind of neglect are frequent and numerous, and only not loud because there seems to be no redress. But, before I point at the remedy, I would fain inquire as to the defence set up for the practice.

And, first, let me say a word as to the non-return of the fee on these occasions. I hate talking about fees or money, but in this case it is unavoidable. It is said to be unprofessional, and against all precedent, to return fees. "No money returned, Vivat Regina!" says the Queen's Counsel. His pocket is

—"that undiscovered bourne  
From which no traveller returns!"

Now, Sir, I deny that any such rule can exist. It is against the honour and dignity of the profession: it is contrary to common sense, and it is not according to the practice of the profession. Fees are frequently returned by counsel, on the express ground that they cannot attend to the duties imposed by them. There is, I venture to repeat, without fear of contradiction, no such general rule.

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Well, Sir, but another and more plausible excuse is made. The brief is said to be given and the fee paid *with notice* that the counsel practises in two Courts. If Tomkins, it is argued, be ruined, it is his own fault, and he must abide the issue of his own choice. Now, Sir, I do not admit this. I grant that where you employ the leading counsel in any one Court, you must take your chance as to the amount of time he can afford you. The little time that he can give will probably avail you more than the greater time a counsel less employed and less able can give you. I admit this; but I deny that any one ever contemplates the entire absence from the duty imposed. It is supposed that the business of the day will be so regulated that the counsel shall at any rate be present: it is never supposed that he to whom you give the whole management of the cause will actually do nothing whatever in it. But if this case should happen, I do declare that it is the duty of the counsel to make all the amends in his power by returning the fee: he should, in my mind, be most glad to do it. He has been unavoidably absent; his client is put to great loss—perhaps, as in the case of Tomkins, he is ruined—he will, at any rate, have all the risk and anxiety of another trial. The counsel should be thankful to be able to return the fee, and thus, to some slight extent, to relieve his conscientious feelings, and to repair the injury he has inflicted. This will be seen if we put a similar case as applicable to any other circumstances. Let us suppose Mr. Alibi to order a coat from his tailor, and to pay for it before hand. This coat shall be required for some express occasion, say on going to the levee; it is not delivered at the appointed time, and Mr. Alibi is pre-

S

vented from going to the levee in consequence. What does Mr. Alibi do. He goes to the tailor, boiling with rage: "Thou unhappy tailor!" says he, even before he crosses the threshold, "where is my coat? Dids't thou not undertake to make it, and did I not pay thee for it before-hand?" "Alas!" says the tailor, "it is true; but, unfortunately, Sir, I was hard at work at the time with Mr. Barebone's breeches." "What have I not lost by thy neglect?" says Mr. Alibi, "my young and beautiful Sovereign holds no more levees this year. What may I not suffer by this act? Instantly pay me my money back again!" Now, does the tailor refuse to pay: on the contrary, he most gladly refunds; and let not Mr. Alibi be offended when I tell him that there is no difference in the two cases, except that Tomkins lost his all, whereas Mr. Alibi lost only his chance of Court favour.

But, Sir, surely it is too clear a case to admit of any doubt. Let me turn therefore to the remedy to be applied. I do not think that the attorneys can do any thing in this matter. Willing as I am to point out, with an unsparing hand, the real faults of the Bar, I will admit that it would be interfering with their independence if the attorneys as a body controuled them as to this. I do not think, therefore, that any understanding or agreement come to, to employ certain counsel in one Court, and certain other counsel in another Court, would be of any avail: it would properly be held to be an undue interference with the rights of the Bar, and would be ineffectual. I cannot, therefore, recommend any such course. I think any new arrangement on the subject must come either from the Bar themselves or the Bench, and it must simply go to confining counsel to some one Court, or to such Courts, the practice in which is not incompatible with each other. This has very recently been done by the Queen's Counsel at the Chancery Bar. It has there been found highly advantageous to the Bar itself, to the Judge and the suitor, to the general dispatch of business, and the honour and character of the profession. The same arrangement should be come to at the Common Law Bar. If it is not done by the Bar it should be done by the Bench. It is, I conceive, within their jurisdiction. They may hear whom they please; they may make rules or orders to this effect. The Lord Chancellor has very recently complained in the House of Lords of the practice of counsel

attending more than one Court;—and this is a matter of daily complaint with most of the Judges. It is full time that something should be done; and probably all that is necessary would be for the Judges privately to intimate to the leading counsel of each Court that it was their wish that some arrangement should be come to in this respect. This would end, we have no doubt, much to the advantage of the Bar itself. Has Mr. Knight Bruce, or Mr. Pemberton, any reason to regret his confining himself to one Court? Why then should any leader in full practice decline a similar step? It would soon be found to work for his advantage.

And now, Sir, I have to hope that my recommendation may not pass unheeded. The present practice works great scandal to the profession. It tends, I do assure you, to bring the Bar into disrepute; and, as one jealous of their honour and welfare, I am anxious to see the real grievance remedied. I have said, however, sufficient of this matter. This happened, in shaking the budget of griefs, to be the first that came to hand. I will address myself to other matters speedily, and whenever you, Sir, can conveniently give me space.

I now remain,

Your obedient servant,

T\_\_\_\_\_.

August 6, 1839.

#### THE RIGHTS OF THE ROAD.

If there be any one point of law on which our readers should be more well informed than another, it is on "the rights of the road." We have from time to time collected the cases on this subject, and if after this they are run over, they have at least the satisfaction of knowing what their remedy is. We have now three new points for them. The first is interesting to all who travel by omnibus,—and who does not?

It appeared that the defendant's omnibus was passing on its journey, when the plaintiff, who was a gentleman considerably advanced in years, held up his finger to cause the driver of the omnibus to stop and take him up, and that upon his doing so, the driver pulled up, and the conductor opened the omnibus door; and that just as the plaintiff was putting his foot on the step of the omnibus, the driver, supposing that the plaintiff had got into it, drove on, and the plaintiff fell on his face to the ground, and was much hurt. *Lord Abinger, C. B.*

thought that the stopping of the omnibus implied a consent to take the plaintiff as a passenger, and that it was evidence to go to the jury, and a verdict was returned for the plaintiff, damages 5*l*. This is not an uncommon case, as some of our readers may remember.

The next point is as to how far a foot passenger is justified in walking on the carriage road. In *Boss v. Litton*, 5 C. & P. 409, and 6 L. O. 91, *Denman*, C. J., said that all persons, paralytic as well as others, had a right to walk in the road, and were entitled to the exercise of reasonable care on the part of persons driving carriages along it. *Patteson*, J., has lately ruled that "a foot passenger has a right to cross a highway; and (alluding to *Boss v. Litton*), I believe that it was held in one case that a foot passenger has a right to walk along the carriage way; but without going that length, it is quite clear that a foot passenger has a right to cross, and that persons driving carriages along the road are liable if they do not take care so as to avoid driving against the foot passengers who are crossing the road; and if a person driving along the road cannot pull up because his reins break, that will be no defence, as he is bound to have proper tackle."

Next as to the side of the road as to foot passengers:—

"With respect to what has been said as to the defendant being on his wrong side of the road, I think you should lay it out of your consideration, as the rule as to the proper side of the road does not apply with respect to foot passengers; and as regards the foot passengers, the carriages may go on which ever side of the road they may please." *Cotterill v. Starkey*, 8 C. & P. 694.

#### RATE OF INTEREST IN THE FORMS OF THE NEW WRITS.

It will have been noticed that in the forms of the new writs of execution the interest on the sum to be levied is stated to be at the rate of four per cent. Where there has been no agreement for interest, this rate is of an equitable amount, but where by a warrant of attorney or cognovit it has been expressly agreed, in consideration of the time allowed to the defendant, that the plaintiff should be entitled to five per cent, this new remedy would be injurious to the plaintiff, if these forms were to be deemed conclusive of the

amount of interest. The 17th section of the 1 & 2 Vict. c. 110, provides "that every judgment debt shall carry interest at the rate of four pounds per centum per annum, from the time of entering up the judgment, or from the time of the commencement of this act, in cases of judgments then entered up and *not carrying interest*, until the same shall be satisfied; and such interest may be levied under a writ of execution on such judgment."

It would appear, therefore, that the rate of four per cent. is applicable to judgments "*not carrying interest*" before this act; but where interest has been agreed to be paid, we presume the rate specified in the agreement may be inserted in the writ of execution. The rate specified in the instrument on which the judgment is signed, may be (though very unusual) *less* than four per cent.: the defendant would then have the benefit of his contract—so should the plaintiff, where the amount is *more* than four per cent.

#### NOTICES OF NEW BOOKS.

*The Practical Man, or Pocket Companion for Solicitors, Valuers, and Owners of Property: comprising Precedents, Rules, Tables, Calculations, &c. in those Matters of Professional and General Business requiring attention when reference cannot be had to the Library.* By Rolla Rouse, of the Middle Temple, Esq., Author of "Copyhold and Court Keeping Practice;" "Remarks on Copyhold Enfranchisement," &c. &c. Third Edition, with numerous and material additions. London: Published for the Proprietors of "The Legal Observer," by Edmund Spettigue, 67, Chancery Lane. 1839.

We are glad to be enabled to put before our readers the *third* edition of Mr. Rouse's Practical Man, which we consider to be a very useful, accurate, and valuable book for the general practitioner. Indeed, in small compass, we know not where else the professional agent or man of business can find the various forms which are to be found in this little volume; viz. Agreements, Acknowledgments, Arbitrations, Bail, Bankruptcy, Bonds, Cognovits, Conditions of Sale, Distresses, Guarantees, Notices, Registration, Tithes, Warrants of Attorney, Wills, Stamps, &c. &c.; with Practical Directions relating to the several matters incident thereto.



In the first edition the object almost solely aimed at was *concentration*, or the giving within a small compass a body of information which, though attainable on reference to the library, was likely to be needed when such reference could not be made. That edition was therefore limited to the more usual legal forms, general computations, and simple values dependent on a life or connected with property.

In the second edition, not only were the legal portions of the work greatly extended, and many special forms added, but a complete system of property valuations was given, so as to embrace interests, present, reversionary, and deferred, and whether absolute or contingent, or determinable on any number of joint lives or survivorships, (a class of values never before made public). The system was also applicable to freeholds, copyholds, advowsons, next and successive presentations; church, collegiate, and other renewable leaseholds; annuities, accumulations, and sums certain; renewal fines, beneficial values, rent equal to premium and rent paying given per centage on leases; copyhold enfranchisements; life policies; tithe commutation rent-charges; difference in value of yearly, half-yearly, and quarterly payments; the comparative value of leaseholds and perpetuities, and to other values in property likely to become matters of calculation. Many of the values are solved by mere inspection of tables, and the rules are so simplified as to require in their application only the knowledge of common arithmetic.

In the present edition every exertion has been bestowed still further to improve the work in all its parts; the most extensive of these improvements are, however, in the legal portion,—the addition of a few tables and some further explanatory remarks having appeared to the author sufficient as to parts 2 & 3.

In *Agreements* additions have been made by the insertion of very special provisions in agreements for leases generally,—of an agreement for lease of a farm, drawn with great care, and with a view to provide for all the points likely to arise on leases of farms;—and an agreement for grant of an annuity is also added.

To *Arbitration* forms are added the appointment of an umpire, and the enlargement of time for award.

In *Affidavits*, *Bail*, *Bankruptcy*, *Cognovits*, and *Warrants of Attorney*, the alterations requisite under 1 & 2 Vict. c. 110, are made.

*Conditions of Sale* are materially improved, by the insertion of such special stipulation as will, with those in the second edition, provide for most of the difficulties likely to arise on sales under auction conditions.

A *Table of Descents* under the old and new law, at one view, has been added. Considerable difficulty existed in the adapting such a table to the small pages of the work; but its importance and great utility were deemed sufficient grounds for overcoming the difficulty.

In *Notices*, although very numerous and special in the former editions, remarks have been added explanatory of the hints to be attended to in notices to quit; and forms have been given of notices requiring delivery of copies of annuity deeds,—of intention to repurchase an annuity,—of intention by assignees to decline a lease,—under Recovery of Tenements Act, and of tenant's dissent from Tithe Commutation Act.

*Registration*.—Claims and notices for counties and boroughs, with dates of delivery, &c. are also given.

In *Wills* the most material additions have been made. Not only has an abstract of the act 1 Vict. c. 26, been given, but nearly thirty new and most carefully drawn forms have been added; and the author has endeavoured to render this part of the work as complete as the necessarily limited space will permit.

Tables of the expectation of life, and of the rates of premium on life insurance and on family endowments, are also comprised in this edition.

The general contents of the work have been carefully revised, and by the adoption of contractions the work has been only in a small degree extended,—in order to preserve its utility as a pocket volume.

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*A Practical Guide to Executors and Administrators: designed to enable them to execute the Duties of their Office with safety and convenience: comprising a Digest of the Law, Stamp-office and other Directions, Forms, Tables of Duties, and Annuities, &c. &c., intended also for the use of Attorneys and Solicitors.* By R. Matthews, of the Middle Temple, Esq., Barrister-at-Law, author of "A Digest of the Criminal Law, alphabetically arranged." Second Edition, corrected to the present time. London: Wm. Crofts, 1839.

We fully noticed the first edition of this work, which was published in 1835. (See

10 L. O. 101.) The present, which is the second edition, appears to be carefully revised. The new portions consist principally of a Digest of the recent Wills' Act, 1 & 2 Vict. c. 26, with an Appendix of Practical Directions for paying the Duties at the Stamp Office, and transacting the business of an Executor in that fiscal establishment. From this latter part we extract the following :—

"On a will being proved, or letters of administration taken out, a copy is transmitted to the commissioners of stamps, and a printed letter is sent from the office in London, apprising the executor or administrator of the circumstance, and giving some general direction for his guidance, and a caution as to the penalties which may be incurred. This letter has a heading as follows :—

'W. Regr. A. B. No. 23, 1835. Fo. 504.'

"This heading refers to the particular department, book, and page, where the will to which it relates is to be found; and as on an average 15,000 wills and administrations are registered every year, it is absolutely necessary, that on writing to the stamp office, you should use this heading at the head of your letter; otherwise it will be thrown aside, unnoticed, and the same evils may be expected, as if you had not written at all. Be careful, therefore, to preserve the first letter you receive.

"A year after this first letter, another is sent, calling for the payment of all duties remaining unpaid; and, unless the residue be bequeathed to a husband or wife of the deceased, also requiring a full account of the deceased's estate, and the manner in which it has been disposed of. If this be not soon attended to, and the duty paid, other and more urgent letters are written, until the duty be paid, or it be shewn that none is due, or the delay be satisfactorily accounted for: otherwise the case is handed over to the solicitor, and legal proceedings are commenced. Let every one be careful to avoid this, for so correctly is the system managed, that no case is lost sight of; and though it be permitted to sleep for awhile, no one can escape in the end.

"If the executor reside in the metropolis or its suburbs, or within the county of Middlesex, he must in all his communications appear in person, either by himself or by his agent, at the legacy office in Somerset House. Letters, unless coming from persons whose residence is elsewhere, will not be attended to.

"Three forms are provided, which may be had at the Legacy office in London, or at any Stamp office in the country, *gratis*. Two of each should be taken and filled up according as the circumstances may be. One set will be finally stamped, and returned to the executor or administrator, and the other will be retained and preserved in the Legacy office.

"The parts in *italics*, show how the forms

are to be filled up; of course the filling up must be varied according to the circumstances of each particular case."

There are so many abridgments of the Wills Act, with notes on the effect of its several provisions, that we need not add to the number by giving a specimen of this branch of the labours of Mr. Matthews. We think he has carefully considered the act and given an accurate summary of its contents. There are various publications for the use and assistance of Executors. We cannot undertake to say which of them is the best: some of them are adapted for professional and some for general use. Mr. Matthews seems to aim at both classes of readers.

We are of opinion that it is in vain to attempt instructing the public in general in the details and technicalities of English Law. Every man *cannot* be his own lawyer, and we doubt whether it is wise for any one to attempt it. Even a lawyer who has the misfortune to be a suitor had better retain some professional brother to advise and act for him. We have a memorable instance of a learned judge who made his own will, and rendered it necessary to resort to a Court of Equity to assist the executors in coming to a right construction of his intention. Another example of the wisdom of lawyers being their own clients is given in the case of the Benchers of one of the Inns of Court, not far from the Temple, who indicted a man for mooring his barge on their ground, and laid the venue in the wrong place.

#### PRIVILEGE OF PARLIAMENT.

THE question of privilege which was brought before the House of Commons, on the petition which we printed in our last Number, has ended not under the circumstances in the punishment of any individual, but in the House coming to the subjoined resolutions, which were adopted by a majority of 120 to 4. The House of Commons is now fairly resolved to vindicate its privileges, if any occasion should arise; and whatever may be the ultimate issue of the contest, if to a contest it come, we do not doubt that any attorney or counsel employed in instituting proceedings contravening the privilege of parliament in publishing its proceedings, would be severely punished. These are the resolutions which were come to on the 1st of this month:

"That the power of publishing such of its reports, votes, and proceedings, as it shall deem necessary or conducive to the public interests, is an essential incident to the constitutional

functions of Parliament, more especially to this House as the representative portion of it.

"That by the law and privilege of Parliament, this House has the sole and exclusive jurisdiction to determine upon the existence and extent of its privileges, and that the institution or prosecution of any action, suit, or other proceeding for the purpose of bringing them into discussion or decision before any court or tribunal elsewhere than in Parliament is a high breach of such privilege, and renders all parties concerned therein amenable to its just displeasure and to the punishment consequent thereon."

Motion,

"That Messrs. Hansard, in printing and publishing a report and minutes of evidence on the present state of the Islands of New Zealand, communicated by the House of Lords to this House on the 1st of August, 1838, acted under the orders of this House, and that to bring or assist in bringing any action against them for such publication, would be a breach of the privileges of this House.

"That Messrs. Hansard be directed not to answer the letter of Charles Shaw, mentioned in their petition, and not to take any step towards defending the action with which they are threatened in the same letter."

## NEW BILLS IN PARLIAMENT.

### REAL ESTATES LIABILITY EXTENSION.

This is a bill to explain and amend the 11 G. 4, & 1 W. 4, c. 47, for facilitating the payment of debts out of real estate. After stating the former enactment, it recites that doubts are entertained whether the herein-before recited provisions of the said act extend to authorise courts of Equity to direct mortgages as well as sales to be made of the estates of such infant heirs or devisees, or of lands, tenements, or hereditaments so devised in settlement as aforesaid, and also to authorise such sales and mortgages to be made in cases where such tenant for life or other person having a limited interest, or such first executory devisee as aforesaid, is an infant; and it is expedient that the said provisions of the said act should be so extended, and that further provision should be made in relation thereto in manner hereinafter mentioned: it is therefore proposed to be enacted—

1. That the said herein before recited provisions of the said act shall extend, and the same are hereby extended, to authorise Courts of Equity to direct mortgages as well as sales to be made of the estates of such infant heirs or devisees, and also of lands, tenements, or hereditaments so devised in settlement as aforesaid, and to authorise such sales and mortgages to be made in cases where such tenant for life or other person having a limited interest, or such first executory devisee as aforesaid, is an infant.

2. That when any sale or mortgage shall be

made in pursuance of the said recited act or this act, the surplus (if any) of the money raised by such sale or mortgage, which shall remain after an swering the purposes for which the same shall have been raised, and defraying all reasonable costs, be considered in all respects of the same nature and descend or devolve in the same manner as the estate, or the lands, tenements or hereditaments so sold or mortgaged, and shall belong to the same persons, be subject to the same limitations and provisions, and be applicable to the same purposes as such estate or such lands, tenements, or hereditaments would have belonged and been subject and applicable to in case no such sale or mortgage had been made.

## ON LEGAL DISCUSSION SOCIETIES.

Sir,

As an humble member and well-wisher of our most honourable (and ought to be, honoured) profession, and as a reader of, and correspondent in, your pages—pages professedly, actually, and constantly employed in advocating and promoting the welfare of all the legal brethren,—I have come forward, hoping to find a spare page or two in your journal, as an advocate for and a supporter of the societies which have lately sprung up under the title of "Legal Discussion Societies." It will not be necessary for me fully to explain the difference in point of *origin* and *principle* between these societies and those overgrown and flourishing societies known by the name of "Debating Societies." It is well known, that in some of them where any particular science or useful learning is the topic of debate, as far as the usefulness goes, they are not dissimilar to the Legal Discussion Societies: neither need I allude to those societies, or rather pot-house clubs for debating on politics; for it cannot be doubted that these last have been the seminaries of incalculable mischief, private as well as public; inasmuch as it is owing greatly to these sort of debating meetings that the past as well as the present political disturbances originated and are supported. It is to the abuse of the societies (professedly good in their constitution, but which, by length of time, and perhaps, to please the taste of some of its members, have dwindled from their original and useful purpose to general and political debating clubs,) I consider to be owing the backwardness exhibited by legal students of every description to join these societies already formed, for discussing *moot points of law only*.

The rule for the examination of attorneys was no doubt the great stimulus to articulated clerks to exertion and industry. Reading alone, even if it gave thoughts, did not and never can give persons confidence to express those thoughts. This was found to be a serious evil in the plan pursued for educating persons for the profession. No attorney or solicitor would like to entrust a clerk with the conduct

of a case, either at the Judge's Chambers or the Master's office:—these being the only opportunities in which a clerk could have the advantage of learning to argue law in public; and if these are out of their reach, a substitute ought to be, and in fact is, found in the Legal Discussion Societies.

I will not pretend to state all the advantages which result from these societies; I will, however, enumerate a few. In the first place, it is an occasion and a spur for diligent reading and meditation, and it excites a desire to be master over the subject for discussion. Secondly, it brings a student's ingenuity and learning into play by devising means whereby he can, not only compete with his companions in legal argument, but excel them. Thirdly, in the profession it is a necessary and indispensable acquirement for an attorney to be able to advocate his client's cause before a Judge at Chambers, or in the Master's Office in Chancery. A Legal Discussion Society will be found a good school to obtain confidence and address. Many persons are endued with excellent thoughts and strong arguments in their minds, but, it is very few who are able in public to express those thoughts to others with clearness, accuracy, and confidence; and confidence can only be acquired by practice. Lastly, and not the least advantage, consists in its being not only a relaxation as well as a means of improving the health, but that it combines with the exercise, sound and necessary learning and confidence.

There are, I believe, two Discussion Societies. The one, first formed, holds its weekly meetings in Lyon's Inn Hall: the other in a room at the Law Institution. I am a member of the former, and have now belonged to it some time; and if I may be allowed to express an opinion, I must say that I have found it a most useful institution. I believe this society is likely to flourish: at present it consists of upwards of thirty members, and is still increasing. The expences are few, the rent of the Hall being almost the only expence. The subscription is also very small, and will of course decrease as the Society increases in numbers.

In concluding my rather long letter, I feel bound to state that I am actuated by no motive beyond that of testifying to all my fellow-students in the law, who have not enlisted in either of these societies, the advantages, as from my own personal experience I can warrant, they must gain in belonging to a society of this description. It is much to my surprise that the members have not increased quicker than they have; and I feel assured, many gentlemen, from not being made aware of the existence of these societies, and the advantages they hold out, have on that account only, not become members. I hope, therefore, that the profession will do all in their power to follow up my faint and weak endeavor to set forth the value of the "Legal Discussion Societies."

D. H. S.

We believe the Students' Society at the Law Institution was established before that in Lyon's Inn. The committee have appropriated a room, free of expense, to the articled clerks.

We quite agree with our correspondent as to the great use of Legal Discussion Societies. We may shortly give some account of the various societies of this kind. From the "Academic," and "Forensic," Societies, the Bar has derived many of its most eminent living members. [Ed.]

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### DUTIES OF SOLICITORS TO THEIR ARTICLED CLERKS.

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*To the Editor of the Legal Observer.*

Sir,

Letters pointing out the duties and complaining of the misconduct of articled clerks, having at different times appeared in your journal, and knowing the general spirit of fairness with which it is conducted, I trust with confidence that you will insert this of mine, on behalf of articled clerks in the country.

Excuse me, Mr. Editor, if I should speak in the language of complaint; for I think the recital of my own experience would convince you that such language is fully justifiable. At first, thinking my own experience, and that of those immediately around me, singular, I made a more extended enquiry, and found that the same voice of complaint is echoed by hundreds. We have all and each to lament that the handsome premium we have paid, was not, as it turns out, to be taught the "art and mystery" of the law and its practice, but for the privilege of occupying an honorable stool in the copyist's office. Our masters, instead of instructing us, according to the moral obligations of their contract, positively keep us as ignorant of practice as they can. Their first and only solicitude about us is to teach us to write a fair round hand:—this accomplished, the humble scribe must toil from day to day, in the routine and drudgery of his profession until the full consummation of the term of five years; and the only recreation he is allowed is that which he finds in carrying out parcels and letters, serving writs, and such like agreeable employments;—an admirable preparative, this, for the severe ordeal of the Examiners! In the country, the profession of an attorney often runs in families, in the same manner that certain trades are confined to particular castes in India. This frequently gives rise to another grievance: the stranger-clerk is made to perform all the drudgery and copying, whilst the kinsman-clerk receives all the drafts, and whatever else may prove instructive to him. A young attorney of my acquaintance, although constantly

employed in writing during the whole of his clerkship, was yet never allowed to make more than one single draft conveyance! My own situation at present is scarcely superior.

Any reflections upon facts like these would be superfluous. They speak for themselves. It is sufficient to direct upon them the searching eye of the public, before which they must quickly vanish, like snow beneath the sun's rays. G. P.

[We think our correspondent exaggerates the number of articulated clerks who suffer under the grievance here set forth; and it is very probable that whilst in some instances the covenants of the attorney are not strictly performed, those of the articulated clerk in an equal proportion are unfulfilled. "There is much to be said on both sides" of this, as of all other questions. Ed.]

#### SELECTIONS FROM CORRESPONDENCE.

*To the Editor of the Legal Observer.*

ENTAIL.—COPYHOLDS.

Sir,  
Will you permit me to inquire through the medium of your useful work, "whether an equitable tenant in tail of copyholds can bar the entail and remainders over by indentures of lease and release, under the 3 & 4 Wm. 4, c. 74?"

Sections 50 and 53 lead me to suppose that such conveyance would be proper. Any correspondent who can acquaint me of what the practice is among conveyancers will render me material assistance, and receive my thanks.

J. F. Jr.

*To the Editor of the Legal Observer.*

EXAMINATION BEFORE THE ARTICLES EXPIRE.

Sir,

As my articles do not expire till next Hilary Term, and I have given notice for examination in Michaelmas Term, I was surprised at your answer to "a Constant Reader," in No. 535 of the L. O., p. 192.

It is quite clear, from the examination rules, that the certificate of fitness of the examiners remains in force till "the term next following that in which the examination takes place;" and such being the case, I am at a loss to understand how your answer to "a Constant Reader" can be correct.

It is, I believe, quite clear, that the examination can take place in the term in which the articles expire, for in Legal Observer, vol. 17, page 144, it is said, "The Candidates whose articles will not expire before the day of

examination may be examined conditionally, but they should leave their articles and answers within the first seven days of term, so far as such answers can be given. It has, on several occasions, been erroneously supposed, that because the answers could not go to the end of the five years, it was unnecessary to leave them. The documents must be made as perfect as circumstances will permit, and the further evidence will be received afterwards."

And in L. O., vol. 17, p. 329, this advice is in great measure repeated.

Now, what I would ask, Sir, is this:—Why cannot a clerk whose articles expire in Easter Term be examined in Hilary, "conditionally," and the documents be made as perfect as circumstances will permit, and the further evidence received afterwards?"

Is there any thing in the rules which will prevent it? Nothing that I can see. The admission, of course, cannot take place till Easter—but why allow a clerk to go up before his articles expire (which system I quite approve of) in the one case, and not in the other. The principle is the same, whether applied in the case of a day, a fortnight, or a term.

W. C. J.

[The Examiners examine conditionally those whose articles will expire in the same term in which they are examined, and the certificate is retained till the time has actually expired, and is dated accordingly; but they cannot certify in Michaelmas Term that a person is fit and capable to act as an attorney when his articles will not expire till after Michaelmas Term. Our correspondent should read the rules and regulations more attentively.—Ed.]

#### CHANGES IN THE LAW

IN THE PRESENT SESSION OF PARLIAMENT.

No. VI.

USURY ON BILLS AND NOTES.

2 & 3 Vict. c. 37.

*An Act to amend and extend until the first day of January one thousand eight hundred and forty-two, the provisions of an act of the first year of her present Majesty for exempting certain bills of exchange and promissory notes from the operation of the laws relating to Usury.*

[29 July, 1839.]

1. 7 W. 4, & 1 Vict. c. 80. *Bills of exchange and contracts for loans or forbearance of money above 10l. not to be affected by Usury Laws.*—Whereas by an act passed in first year of the reign of her present Majesty, intituled, "An

Act to exempt certain bills of Exchange and Promissory Notes from the operation of the laws relating to Usury." it was enacted that bills of exchange payable at or within twelve months should not be liable, for a limited time, to the laws for the prevention of usury: And whereas the duration of the said act was limited to the first day of January, one thousand eight hundred and forty; and it is expedient that the provisions of the said act should be extended: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That from and after the passing of this act no bill of exchange or promissory note made payable at or within twelve months after the date thereof, or not having more than twelve months to run, nor any contract for the loan or forbearance of money, above the sum of ten pounds sterling, shall, by reason of any interest taken thereon or secured thereby, or any agreement to pay or receive or allow interest in discounting, negotiating, or transferring any such bill of exchange or promissory note, be void, nor shall the liability of any party to any such bill of exchange or promissory note, nor the liability of any person borrowing any sum of money as aforesaid, be affected, by reason of any statute or law in force for the prevention of usury; nor shall any person or persons or body corporate drawing, accepting, indorsing, or signing such bill or note, or lending or advancing or forbearing any money as aforesaid, or taking more than the present rate of legal interest, in Great Britain and Ireland respectively, for the loan or forbearance of money as aforesaid, be subject to any penalties under any statute or law relating to usury, or any other penalty or forfeiture, any thing in any law or statute relating to usury, or any other law whatsoever in force in any part of the United Kingdom, to the contrary notwithstanding: Provided always that nothing herein contained shall extend to the loan or forbearance of any money upon security of any lands, tenements, or hereditaments, or any estate or interest therein.

2. *Five per cent to be considered the legal rate of interest, except &c.*—Provided always, and be it enacted, that nothing in this act contained shall be construed to enable any person or persons to claim, in any court of Law or Equity, more than five per cent. interest on any account or on any contract or engagement, notwithstanding they may be relieved from the penalties against usury, unless it shall appear to the court that any different rate of interest was agreed to between the parties.

4. *Not to affect the law as to pawnbrokers.*—Provided always, and be it enacted, that nothing herein contained shall extend or be construed to extend to repeal or affect any statute relating to pawnbrokers, but that all laws touching and concerning pawnbrokers shall remain in full force and effect, to all intents and purposes whatsoever, as if this act had not been passed.

4. *Continuance of Act.*—And be it enacted, That this act shall continue in force until the first day of January, one thousand eight hundred and forty-two.

5. *Act may be amended this Session.*—And be it enacted, that this act may be amended or repealed by any act to be passed in this session of parliament.

[Some alterations have been made since we noticed this measure whilst passing through parliament, especially the provision in the second section, that no more than five per cent shall be claimed as interest on any account or contract, unless it appear that a different rate of interest was agreed to between the parties.

By this act (s. 1.) contracts for the loan or forbearance of money above 10*l.*, are not void for usury by reason of any interest taken thereon. The limitation which applies to Bills of Exchange or Promissory notes, *payable within twelve months*, or not having more than twelve months to run, does not appear to extend to other contracts. It would seem that an *agreement* to lend any sum above 10*l.*, for any length of time, at any rate of interest, will be valid. The proviso that the act shall not extend to securities on lands, tenements, and hereditaments, or any estate or interest therein, is important. ED.]

## No. VII.

### ANNUAL INDEMNITY ACT.

2 & 3 Vict. c. 33.

*An act to indemnify such persons in the United Kingdom as have omitted to qualify themselves for offices and employments, and for extending the time limited for those purposes respectively until the twenty-fifth day of March one thousand eight hundred and forty; and for the relief of clerks to attornies and solicitors in certain cases.*

[29th July 1839.]

By the 1st section, persons who have omitted to qualify themselves as required by the recited acts are indemnified and allowed further time.

The 2d gives indemnity to those who have omitted to make and subscribe the oath and declaration required by the Irish act of 2 Anne.

But not to indemnify persons against whom final judgment is given (s. 3).

Nor to exempt justices acting without legal qualification (s. 4).

By the 5th section admissions to corporations may be stamped after the time allowed by law.

6. *Indemnity to persons who have paid the du-*

*ties on indentures to serve as clerks to attorneys, &c. but have neglected to cause affidavits thereof to be made. Neglect of attorneys, &c. in taking out their annual certificates not to disqualify the persons who have served them.*—And whereas many persons who may have paid the proper stamp duties, either before or within six months after the execution of the contracts in writing entered into by them to serve as clerks to attorneys or solicitors, scriveners or notaries public, in Great Britain, have omitted to cause affidavits to be made, and afterwards to be filed in the proper office, of the actual execution of such contracts, and have also omitted to cause such contracts and the indentures thereof to be enrolled within the time in which the same ought to have been done; and many solicitors, attorneys, notaries public, and others have omitted to take out annual certificates, or to enter the same in the proper office; and many infants and others may thereby incur certain disabilities: For preventing thereof, and relieving such persons, be it enacted, that every person who shall, either before or within six months after the execution of such contract or indenture, have paid the proper stamp duty in that behalf, and who at the passing of this act shall have neglected or omitted to cause any such affidavit or affidavits as aforesaid to be made and filed, or such contract or indenture to be enrolled, and who, on or before the first day of Hilary Term one thousand eight hundred and forty, shall cause such contract or indenture to be enrolled with the proper officer in that behalf, and one or more affidavit or affidavits to be made, and afterwards to be filed, in such manner as the same ought to have been made and filed in due time, shall be and is hereby indemnified, freed, and discharged from and against all penalties, forfeitures, incapacities, and disabilities in or by any act or acts mentioned, and incurred or to be incurred for or by reason of such neglect or omission; and every such affidavit and affidavits so to be made, and which shall be duly filed on or before the first day of Hilary Term, one thousand eight hundred and forty, shall be as effectual to all intents and purposes as if the same had been made and filed within the respective times the same ought, by the laws now in being for that purpose, to have been made and filed; and that the respective officer or officers who ought to receive, file, enter, or register such contract or indenture, or affidavit or affidavits, shall not refuse to receive, file, enter, or register the same by reason that the attorney, solicitor or notary public to whom such infant or other person shall have been articulated or have contracted to serve shall have neglected to take out his annual certificate, or to register the same, but such officer or officers are hereby directed and empowered to receive, file, enter or register the same, notwithstanding such omission; and that every person who shall have regularly served any attorney or attorneys, solicitor or solicitors, notary public or notaries public, for the term of years required by law, shall not be prevented or disqualified from being admitted an attorney, solicitor or notary

public, by reason of any omission of the person or persons to whom he served for the same term, or for any part thereof, having so neglected to take out his annual certificate, or to register the same, provided that such person is otherwise entitled to be created and admitted to such office by the laws now in force relating thereto.

7. *Defects in the service &c. of attorneys not to disqualify persons who have served them.*—And be it enacted, that in case the attorney, solicitor, proctor, or notary to whom any person shall have duly served his clerkship under articles in writing for that purpose shall after such service of the clerk be struck off the roll in consequence of some defect in the service under the articles of clerkship or of the admission and enrolment of such attorney, solicitor, proctor, or notary, the person who has so duly served his clerkship shall not be prevented or disqualified from being admitted and enrolled as an attorney, solicitor, proctor or notary, nor liable to be struck off the roll if admitted, by reason of any such defect as aforesaid, provided that such clerk or person be otherwise entitled to be admitted and enrolled according to the laws now in force relating thereto.

8. *Applications for striking attorneys off the roll for defect in articles &c., to be made within twelve months of admission.*—And be it enacted, that no person who has been admitted and enrolled and in actual practice as an attorney, solicitor, proctor, or notary, shall be liable to be struck off the roll for or on account of any defect in the articles of clerkship, or the registry thereof, or the service under such articles, or of his admission and enrolment, unless the application for striking him off the roll be made within twelve months from the time of his admission and enrolment.

9. *In case of articles being lost, the Court may order a copy thereof to be enrolled.*—Provided always, and be it enacted, that in any case in which the original articles of clerkship shall have been or shall hereafter be lost or destroyed before or after payment of the duty, it shall be competent to either of her Majesty's Superior Courts at Westminster to direct the enrolment of a copy of such articles, upon being satisfied, by such evidence as shall appear to the Court sufficient to prove the loss of such original articles, the authenticity of the paper proposed for enrolment, and that the duty has been duly paid upon such articles or upon the copy thereof, to be shown by the denoting or other appropriate stamp, as the case may require, and provided such Court shall be satisfied that the clerk has duly served under such articles from the time of the execution thereof, or for such time as shall appear satisfactory to the Court under the circumstances of the case.

10. *The word "months" in 7 G. 4, c. 44, to mean calendar months.*—And whereas by an act passed in the seventh year of the reign of his Majesty King George the Fourth, to allow, until the tenth day of October one thousand eight hundred and twenty-six, the enrolment of certain articles of clerkship, and for other purposes therein mentioned, it was enacted,

that it should not be lawful for the commissioners of stamps, or any of their officers, to stamp, under any pretence whatever, after the expiration of six months from their date, any articles of clerkship to attornies or others, as therein specified: And whereas the using of the word "months" in the said last-mentioned act, in this respect, without the addition of the word "calendar," occasioned mistakes and inconveniences; be it enacted, that from and after the passing of this act the word "months" used in the said last-mentioned act, so far as the same relates to the stamping of articles of clerkship to attornies and others therein specified, shall be understood to mean calendar months.

11. *Indentures &c. may be stamped before last day of Michaelmas term 1839, if application was made therefore within six calendar months from the dates thereof.*—And whereas several persons bound to serve as clerks or apprentices to attornies or solicitors have applied to have the indentures or contracts of such clerkship stamped after the expiration of six lunar and before the expiration of six calendar months from the date thereof; Be it enacted that it shall and may be lawful for the commissioners of stamps and taxes, or any of their proper officers, at any time before the last day of Michaelmas Term, one thousand eight hundred and thirty-nine, to stamp any articles of clerkship, contract, indenture or other instrument whereby any person hath become bound to serve as a clerk or apprentice, in order to his admission as an attorney or solicitor in any of the courts of law or equity, although the period of six calendar months from the date thereof hath now elapsed, upon payment of the proper duty payable in respect of the same, and of the further sum of five pounds by way of penalty, provided it shall be proved to the satisfaction of the said commissioners that application was made to them or their proper officer to have such articles, contract, indenture, or instrument stamped within six calendar months from the date thereof.

12. The act is not to restore persons to any office avoided by judgment.

13. *General Issue.*—And be it enacted, that in case any action, suit, bill of indictment, or information shall from and after the passing of this act be brought, carried on, or prosecuted against any person or persons hereby meant or intended to be indemnified, recapacitated, or restored, for or on account of any forfeiture, penalty, incapacity, or disability whatsoever incurred or to be incurred by any such neglect or omission, such person or persons may plead the general issue, and upon their defence give this act and the special matter in evidence upon any trial to be had thereupon.

It will be observed that this act contains the usual clauses enabling persons who have paid the duty on articles of clerkship to file the affidavit of due execution on or before the first day of next Hilary Term, and indemnifying

them against the neglect of the attorneys to whom they are articulated in taking out their annual certificates. Defects in such attorneys' service, enrolment, &c. it is also enacted shall not disqualify the persons who serve them.

The clause which has been introduced of late years, requiring applications for striking attorneys off the rolls for defect of articles, &c. to be made within twelve months of admission, has been renewed in this act, without any exception as to fraud.

The 9th section is new. It enables the Superior Courts, where articles have been lost, to order the enrolment of a copy, upon being satisfied of the loss and the authenticity of the copy, and that the duty has been paid, provided that the Court shall be satisfied that the clerk has duly served under the articles. This clause, we believe, is intended to apply to a case which we mentioned when the bill was before Parliament. See p. 200, *ante*.

## SUPERIOR COURTS.

### Rolls.

#### WILL.—CONSTRUCTION.—UNCERTAINTY.

*A testator gave his daughter H. R. 25,000*l.*, and a house A., and furniture, for her absolute use, but without liberty to sell or assign the same during her life. There was no gift over. Held, that this was an absolute gift. The same testator revoked by codicil a bequest given by his will to his wife, and instead thereof gave her 10,000*l.* for her life, then to his daughter H. R., and his house B., and furniture, &c.—in short, the whole of his property at his decease, except his carriages, &c.; and it was his will she should continue in either house, and have the use of same during her life: Held, that the wife was entitled to the 10,000*l.* for her life; but it being uncertain whether she or the daughter was meant by the subsequent words, the gift of the residue was held void for uncertainty.*

John Richards, by his will, dated in December, 1835, bequeathed to Ellen Parker, daughter of his wife, 3000*l.*; to Emma, another of his wife's daughters, and the wife of Joseph Newton, 3000*l.*, and also a house in Cambridge Terrace, Edgware Road, held for a term of 90 years, subject to the ground rent, both for her separate use, exclusive of her husband. He also bequeathed to his natural daughter, Harriet Richards, the sum of 25,000*l.*, and his house in Clarendon Place, Edgware Road, and all the furniture, &c. therein, for her own absolute use, but without liberty to sell or assign the same dur-



ing her life; and he gave his wife the residue of his estate of what nature and kind soever; and he appointed the said Joseph Newton and Edward Savage Bailey, and John King, executors in trust, with his wife, of his said will. The testator made a codicil to the will, but cancelled it afterwards; it was as follows:—"It is my wish that my wife should continue in the house with my daughter, and have the use of the furniture, unless my daughter and wife disagree. If so, my wife to have my furniture from the house to the value of 100*l.*, and twenty dozen of wine, and half of the silver plate." The testator made a second codicil to his will, dated October, 1837, which was in the following words,—"I revoke that part of my will—instead of giving the whole of my property, after the legacies are paid, to my wife, I give and bequeath to her 10,000*l.*, to be invested in the funds, in the names of Joseph Newton, Frederick Kelly, and E. S. Bailey, the interest of which shall be paid to her during her life, and then to go to my daughter, now Harriet Kelly, (the testator's natural daughter had married between the date of his will and this codicil,) and my house and furniture, plate, wines &c., at 72, King's Road, Brighton; in short, the whole of my property at my decease, except my carriages and horses, and my gold repeater; and it is my further wish, that she may continue in either house (but not change), and have the use of the same during her natural life, wines, spirits &c. included. P.S. "The 1000*l.* lent to Joseph Newton, and interest at five per cent, I also give and bequeath, making together, to Joseph Newton and Emma his wife, 4000*l.* October, 1837."

The executors filed a bill for establishing the will and second codicil, and for ascertaining the rights and interests of the several parties. The testator's next of kin also filed a bill against the executors, making claim to his residuary estate as undisposed of. Several questions were raised at the hearing: first, whether the testator's natural daughter, Mrs. Kelly, took the property bequeathed to her by the will, absolutely or for life only. The second question was, what interest she and the testator's widow respectively took under the will and second codicil; and the third was, whether the residue of the testator's estate was effectually disposed of.

Mr. Pemberton, Mr. Tinney, Mr. Kindersley, Mr G. Richards, and other counsel for the several parties, were heard on these points. The nature of their arguments may be collected from the following judgment.

Lord Langdale, M. R.—The first question in these causes is upon the gifts of the 25,000*l.*, and the house in Clarendon Place, to the testator's daughter, Mrs. Kelly, and it is whether she takes them absolutely or only for her life. The testator, by the will, gave 3000*l.* to each of his wife's two daughters, and then he gave to Harriet Richards 25,000*l.* and his house in Clarendon Place, and all the furniture, &c. for her own absolute use, without liberty to sell or assign, during her natural life. It was contended that the words "during her natural

life," pointed to the whole enjoyment and benefit which she was to have in the property; but I am of opinion that the testator intended to give her the whole interest in the 25,000*l.* and the house in Clarendon Place for her own absolute use, but so that she should not have power to dispose of them during her life. Probably the testator had regard to that restriction on the enjoyment of property by females, which is recognised by courts of equity, and which is that they may have property without all its legal incidents. I am of opinion, therefore, that the testator intended to give her the absolute interest in the legacy and house, but without the power of disposing of it during her life. The testator then gives all the residue of his estate and effects, of what nature and kind soever, to his wife. There is not any material difficulty in the construction of the will; but the codicil is, no doubt, very difficult of construction; and I am of opinion that it cannot be carried into effect, at least judicially. By this codicil the testator first revokes that part of his will by which the residue of his property was given to his wife; he says, "I revoke that part of my will; instead of giving the whole of my property, after the legacies are paid, to my wife, I give and bequeath to her 10,000*l.* to be invested in the funds." He does not mean to give to her the whole of his property after payment of his legacies, but instead of that he gives to her 10,000*l.* to be invested in the names of trustees, and the interest to be paid to her for life, "and then" he proceeds, "to go to my daughter, now Harriet Kelly, and my house and furniture, plate, wines &c., at 72, King's Road, Brighton,—in short, the whole of my property at my decease, except my carriages and horses, &c.; and it is my further wish that she may continue in either house (but not change) and have the use of the same during her natural life, wines, spirits, &c. included." The question is, whether anything beyond the reversionary interest of 10,000*l.* is given by this codicil to Mrs. Kelly; and what, if anything, more is given than the 10,000*l.*,—the interest of which is given to the widow for life; and the next question is whether with the exception of this 10,000*l.*, the remaining gifts in this codicil are not void for uncertainty. The testator does not mean to give the whole of his residuary property to his wife, but he does mean to give her the interest of 10,000*l.* for life, which was then to go over to his daughter. As to the rest of his property, the testator intended to give it between his wife and daughter somehow, but in what way it is difficult to say. I think the word "she" must mean his wife, and if so, this must have been a liberty to continue in the house which he had previously intended to give to his daughter. It is extremely probable that the testator intended to give his house at Brighton and the rest of his property to his daughter; but I do not find words which can make me put that construction on the will. The widow, I hold, to be entitled to 10,000*l.* for her life, with remainder to Mrs. Kelly. So much of the will is clear, but not so as to the residuary

estate, which I think must be held undisposed of.

*Newton v. Richards*, and *Baker v. Newton* and others, Sittings at the Rolls, July 4th, 1839.

### Queen's Bench.

[Before the Four Judges.]

#### SALE.—DELIVERY.—LIEN.

*The question whether there has in fact been a delivery of goods may properly be left to the jury, to be decided by the particular circumstances under which the parties dealt with each other.*

*The existence of a right of lien over the goods is only a circumstance to be taken into consideration, but is not a criterion by which to decide whether there has been a complete delivery of goods sold.*

This was an action brought to recover the value of a phaeton. The declaration contained a special count, setting forth an agreement, by which the plaintiff agreed to build a phaeton for the defendant, and if it was not approved of, then to build another. It then alleged performance of the agreement on the part of the plaintiff, and an offer by him to deliver the second phaeton, and a refusal by the defendant to accept or pay for the same. The second was a count for goods sold and delivered. The defendant pleaded non-assumpsit to the common count, and special pleas as to the other, traversing the plaintiff's performance of the agreement. The cause was tried before Mr. Justice Patteson in the Bail Court, when it appeared that a second phaeton having been made, as soon as it was finished the defendant called to see it, and brought with her a cover to cover the carriage. The traces had been made in a particular way for the purpose of fitting the carriage. The defendant directed the cover to be put on, and said that she would order horses, and would herself call in the afternoon to fetch the carriage away. It turned out a wet afternoon, and she did not call. She afterwards refused to receive the carriage. A letter was written to her by the plaintiff, requiring her to take away the carriage, and pay the price, and on her refusal to do so, this action was brought. The learned Judge left it to the jury to say whether there had not been in fact a complete delivery of the carriage. The jury found in the affirmative, and a verdict was therefore entered for the plaintiff on the common count. A rule had since been obtained to set aside this verdict, and to have a new trial, on the ground that the jury had given the verdict in opposition to the directions of the learned Judge, and it was stated that in leaving it to the jury to say whether there had in fact been a delivery, his Lordship had told them that the plaintiff here had not parted with his right of lien over the goods, and that, not having done so, there could be no delivery.

Mr. Knowles shewed cause. The direction here was right. There is sufficient to shew a delivery so as to support the verdict on the

common count. *Elmore v. Stone*<sup>a</sup> is in point. There, after a dispute about the price, the defendant bought two horses of the plaintiff by sending word to the effect that the horses were his, but that as he had neither servant nor stable, the plaintiff must keep them at livery for him. The plaintiff on that removed them out of his sale stable into another, and the Court, after argument, held that there was a sufficient delivery. That case was founded on *Chaplin v. Rogers*.<sup>b</sup> In *Blenkinsop v. Clayton*,<sup>c</sup> where there was a doubt whether the circumstances proved amounted to a delivery, it was held, that at all events the question of delivery was one for the jury to determine. Mr. Baron Alderson recently acted on this rule in *Baines v. Jervous*.<sup>d</sup> In *Smith v. Chance*,<sup>e</sup> the rule as to delivery is thus laid down by Mr. Justice Holroyd: "A party cannot maintain an action for the price of goods sold and delivered until he has either delivered them, or done something equivalent to delivery; as for instance, if he has put it in the vendee's power to take away the goods himself." Now the circumstances here clearly bring the case within that rule. *Tempest v. Fitzgerald*,<sup>f</sup> will be cited on the other side, but it is distinguishable from the present. That was a case where A. agreed to purchase a horse from B. and to take it within a specified time. At the expiration of that time, A. rode it—promised to fetch it away and pay the price, but requested that it might be allowed to remain for a further time on B.'s premises, and gave directions as to its treatment there. The horse died before A. paid the price or took it away, and it was held that there was no acceptance of the horse by him within the meaning of the Statute of Frauds. The distinction between that case and the present is, that there the horse was not put into the hands of the purchaser for the purpose of taking it away, but only for that of riding it. *Howe v. Palmer*,<sup>g</sup> *Hanson v. Armistage*,<sup>h</sup> and *Carter v. Touissant*,<sup>i</sup> may be distinguished on the same ground. The property here passed to the defendant, who exercised dominion over the goods. The learned Judge did not direct the jury as supposed, but if he had done so, that would not have altered the case. The plaintiff might still retain his right of lien, but that would not affect the delivery. In *Blowam v. Sanders* Mr. Justice Bayley in delivering the judgment of the Court says,<sup>k</sup> "Where goods are sold, and nothing is said as to the time of the delivery or the time of payment, and every thing the seller has to do with them is complete, the property vests in the buyer, so as to subject him to the risk of any accident which may happen to the goods, and the seller is liable to deliver them whenever

<sup>a</sup> 1 Taunt. 458.

<sup>b</sup> 1 East, 192.

<sup>c</sup> 1 Moo. 328; 7 Taunt. 597.

<sup>d</sup> 7 Car. & Pay. 218. <sup>e</sup> 2 Barn. & Ald. 753.

<sup>f</sup> 3 Barn. & Ald. 680.

<sup>g</sup> *Ibid.* 321.

<sup>h</sup> 1 Dowl. & Ryl. 128; 5 B. & Ald. 557.

<sup>i</sup> 1 Dowl. & Ryl. 515; 5 B. & Ald. 855.

<sup>k</sup> 4 Barn. & Cress. 948.

they are demanded, upon payment of the price; but the buyer has no right to have possession of the goods till he pays the price." That rule was adopted in *Tarling v. Baxter*.<sup>1</sup> The question of lien, therefore, is immaterial in the present case. [There were other points argued, but the judgment was confined to those already stated.]

Mr. *Hayward*, in support of the rule. All that took place here amounted merely to a declaration of an intention to take away the carriage. That is not sufficient. In *Smith v. Sarman*,<sup>m</sup> it was held that there was no actual receipt of the goods or part acceptance to satisfy the Statute of Frauds, because there was nothing to shew that the purchaser had divested himself of his right to object to the quality of the goods, or that the seller had lost his lien for the price. Mr. Baron *Parke* there puts these things as the true test by which to decide the question of delivery: The right to lien is therefore an important ingredient in this discussion. The plaintiff himself treated the lien as subsisting here, for he did not say, Come, and take away your carriage which is incumbering my premises; but "Come, and take away the carriage, and pay for it." *Elmore v. Stone*,<sup>n</sup> is distinguishable from the present; for the change of stable amounted to a change of possession. It was a renunciation by the vendor of his right to treat the horse any longer as his property. *Blinkin-sop v. Clayton*,<sup>o</sup> is not at all in point. *Tempest v. Fitzgerald*,<sup>p</sup> is an authority for the defendant; for there, though it was found as a fact that there had been an exercise of the acts of ownership, still, the court held that the action for the price of the horse sold, could not be maintained, because there had not been a sufficient delivery; so that even these acts of ownership did not of themselves pass the property. In *Baldev v. Parker*,<sup>q</sup> the same point was held, though there the defendant had marked some of the goods, and had desired them to be sent to his house, with a bill of parcels, and they were sent accordingly. The same rule was acted on in *Maberly v. Shephard*.<sup>r</sup> The Courts do not favour these constructive evasions of the statute of frauds, *Bowler v. Arnott*.<sup>s</sup> All these authorities show that there must be a distinct and specific delivery of the goods in order to enable the plaintiff to recover. No such delivery has been proved in this case. The circumstances here do not amount to a good constructive delivery, and this verdict therefore cannot be supported.

Lord *Denman*, C. J.—I own that it appears to me that the jury found a right verdict on the question of goods sold and delivered. There was a complete delivery on one part, and there was an acceptance on the other. I think that must be taken to be so, if a party has the full opportunity of taking away the goods, but leaves them for some addition to be

made to them—an addition of his own suggestion, made at a time when he had full control over the goods. The jury did right in finding that there was a delivery, if such were the intention and understanding of the parties at the time. My brother *Patteson* was supposed to state that there could not be a complete delivery, as there was no parting with the lien over the goods. That is not the test, and the learned Judge could not have said any such thing. Mr. Baron *Parke*, in the case referred to, only speaks of it as one of the circumstances which shew a delivery. It is clear that this could not be the test; for there may be a complete delivery, and then, the goods being left in the hands of the party who has delivered them, the lien might still attach. I do not doubt that my brother *Patteson* left it to the jury to say whether the delivery was complete in fact, and if it was so, the jury did right to find this verdict. That being so, the other matters are not worth being considered.

Mr. Justice *Littledale*.—I think that this verdict can be supported on the count for goods sold and delivered. There was a sufficient delivery here. If there had not been a delivery the defendant should not have allowed the cover to be put on; but he did allow it, and then she said that horses should come and fetch the phaeton. The horses did not come; but that circumstance makes no difference in the case. There was an intention which happened not to be carried into effect. The horses did not come, but the traces were put on, and so the whole was in the possession of the defendant, who exercised acts of ownership over it. I think that it was properly left to the jury to say whether there was in fact a delivery.

Mr. Justice *Patteson*.—I think that the jury had a good ground for finding a verdict for the plaintiff on the count for goods sold and delivered. I do not quite recollect what passed on the trial; but, even if I did tell the jury that there could not be a good delivery as there was no parting with the lien, the only result is, that I was wrong, and that the jury was right.

Mr. Justice *Williams*.—I am entirely of the same opinion. Mr. *Hayward* expressly admits that this case depends on its own circumstances. The circumstances here seem to be sufficient to shew that the plaintiff did deliver full possession to the defendants, and that they took possession, though, for some cause or other, they did not take away the carriage. The criterion alluded to for the purpose of shewing that the delivery was not complete,—I mean that of the lien being reserved,—does not affect the case, for that is merely a circumstance to be taken into consideration, but is not to govern the case. For instance, in *Elmore v. Stone*, it is admitted that the delivery was complete. But now try that case by the question of lien. Was *Elmore* completely to part with the possession of the horse if payment was not made? It is clear that he had a lien on it, yet there was a full delivery. The right to lien may be a circumstance to throw

<sup>1</sup> 6 B. & Cres. 360.      <sup>m</sup> 9 B. & Cres. 561.

<sup>n</sup> 1 Taunt. 453.

<sup>o</sup> 1 Moo. 328; 7 Taunt. 597.

<sup>p</sup> 3 Barn. & Ald. 680.      <sup>q</sup> 2 Barn. & Cres. 37.

<sup>r</sup> 10 Bing. 19.

<sup>s</sup> 3 Tyr. 268.

light on a case, but it does not afford a criterion to decide it

Rule discharged.—*Wright v. Percival*, T. T. 1839. Q. B. F. J.

### Exchequer of Pleas.

#### JUDGMENT AGAINST CASUAL EJECTOR.— PERSONAL SERVICE ON TENANT.

*Where in ejectment, a tenant residing abroad had been served, the Court granted a rule for judgment against the casual ejector.*

Channell moved for judgment against the casual ejector, upon an affidavit which stated that service had been effected personally upon one of the tenants, who resided at Boulogne in France.

*Per Curiam*.—The service is sufficient.

Rule granted. *Doe d. Daniell v. Woodruff*, T. T. 1839. Excheq.

#### PATENT ACT.—COSTS OF ISSUES AND OBJECTIONS.—REG. GEN. H. T. 4 W. 4, R. 74.

*Where in an action for an infringement of a patent, the defendant succeeded on the substantial issue in the cause, the Court held that he was entitled to the costs of that issue, and the general costs of the cause; the 74th rule of H. T. 2 W. 4, not being affected by the statute 5 & 6 W. 4, c. 83, s. 5.*

John Bayley moved for a rule calling upon the defendant to shew cause why the Master should not review his taxation of costs in this suit. It was an action on the case brought against the defendant for an infringement of a patent. The pleas were, first, the general issue; secondly, that the supposed improvement was not a new invention; thirdly, that the plaintiff was not the inventor; and lastly, that no specification had been enrolled. The defendant delivered a notice of the objections which he intended to raise, which were seven in number, and one of them was similar in effect to the third plea. The cause was tried before Lord Abinger, C. B., and the jury found for the defendant on the third plea, and for the plaintiff on the remainder. The learned judge certified under the 3rd section of the 5 & 6 W. 4, c. 83, (the Patent Act), and also that it was a fit case to be tried by a special jury, and the Master taxed the defendant the general costs of the cause, including also those on the third issue, but deducted the plaintiff's costs on the other issues. It was now submitted that this taxation was incorrect. The terms of the 5th section of the statute were, "that in any action brought for infringing the right granted by any letters patent, in taxing the costs thereof, regard shall be had to the part of such case which has been proved at the trial, which shall be certified by the judge before whom the same shall be had, and the costs of such part of the case shall be given according as either party has succeeded or failed therein, regard being had to the notice of objections as well as to the counts in the declaration, and without regard to the general result of the trial." It

was contended, that under this provision the plaintiff was entitled to three-fourths of the costs, the 74th rule of H. T. 2 W. 4, being rendered inoperative. That rule ordered "that no costs shall be allowed on taxation to a plaintiff upon any counts or issues upon which he has not succeeded, and the costs of all issues found for the defendant shall be deducted from the plaintiff's costs."

The Court said that the effect of the statute was not such as had been suggested. Before this act was passed, the defendant might plead the general issue, and give his defence in evidence under it, but the effect of the new provisions was to take away that right, and by means of the objections and the certificate of the judge at Nisi Prius, to raise, in effect, so many distinct issues, the costs of each of which were to follow their respective results. This object, however, had been already effected by the rules of the judges as to pleadings and costs, which escaped the attention of the legislature. In this case, the objections are only a repetition of the pleas, and do not much affect the costs, but as six of them are found for the plaintiff and only one for the defendant, the former is in strictness, entitled to six-sevenths of the costs of copying them, and he may take a rule to that effect; but on the pleadings he is only entitled to the costs of the issues found for him, and not to the general costs of the cause.

Bayley declined to take the rule on these terms.

Rule accordingly.—*Losche v. Hague*, T. T. 1839. Excheq.

#### MALICIOUS ARREST.—EVIDENCE OF DISCONTINUANCE OF SUIT.

*In an action for a malicious arrest, proof of a rule to discontinue a suit upon payment of costs, and of the taxation and payment of costs, is sufficient to substantiate an averment of the discontinuance of an action without the production of the judgment roll.*

J. Jervis moved to enter a nonsuit in this action. It was a case for maliciously holding the plaintiff to bail, and the declaration contained an averment of the discontinuance of the suit. The defendant pleaded not guilty. The cause was tried before Parke, B., when, in order to substantiate the allegation made evidence was tendered of a rule of Court to discontinue the action upon payment of costs, and of a subsequent payment of those costs. On the part of the defendant it was contended that the evidence was insufficient, and the learned judge then amended the record, so as to make it conformable to the proof given, and a verdict was found for the plaintiff with 40*l.* damages. It was now contended that the judgment roll should have been produced. In *Bristow v. Heywood*, 1 Stark. 48, it was held that evidence similar to that here given was sufficient to support an averment that the suit was wholly ended and determined. Here, however, the allegation was, "that the defen-

dant did not prosecute his suit with effect, but voluntarily permitted the same to be discontinued for want of prosecution thereof, whereupon it was then considered by the Court, that the defendant should take nothing by his writ, as by the record and proceedings thereof did more fully appear, whereupon and whereby the said suit then became, and was and is wholly ended and determined." In order to support this, the judgment roll was the only evidence which could be given as to whether any default had been made or not.

*Alderson, B.*—Does not the plea of Not Guilty admit the fact of the termination of the suit?

*Jervis.*—The rule of H. T. 4 W. 4, declared that that plea should operate as a denial of the wrongful act. There the wrongful act consisted in the malicious commencement of an action, and the subsequent failure to prosecute it.

*Lord Abinger, C. B.*—I think that we ought not to grant this rule. The wrongful act is the arrest of the plaintiff without reasonable or probable cause, and is completely independent of the subsequent discontinuance of the suit. As the Courts, however, will not deal with questions of this description while the original action is pending, it becomes necessary to shew that it has been discontinued or otherwise terminated. The mode in which that discontinuance or termination of the suit has been effected is immaterial, so long as it appears on record that the suit is at an end.

Rule refused.—*Watkins v. Lee*, T. T. 1839. Excheq.

#### LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

##### House of Lords.

- To amend the jurisdiction for the Trial of Election Petitions. [In Committee.]
- To amend the Law touching Letters Patent for Inventions. [In Committee.]
- To amend the Law relating to double and treble Costs. [For second reading.]
- To regulate the Proceedings in the Stannary Courts. [For third reading.]
- For the Reduction of the Postage Duties. [In Committee.]
- For amending the Highway Act.
- For regulating the High Court of Admiralty. [For second reading.]
- For regulating the Metropolitan Police Courts. [For second reading.]

##### Bills passed.

Metropolis Police.  
City of London Police.  
Custody of Infants.  
Trial of Prisoners.  
Holding Assize Courts.  
Payment of Debts out of Real Estate.

##### Postponed.

##### Registration of Births.

##### House of Commons.

To regulate and enlarge the Summary Jurisdiction of Justices. Lord John Russell.

[In Committee.]

Small Debts Court Bills No. 2, for the following places:—Kingsbridge and Doddbrooke, Leeds, Liskeard, Liverpool, Newton Abbot, Tavistock, West Ham.

To abolish Grand Juries. Mr. Pryme.  
For the registration of Parliamentary Electors. [In Committee.] Mr. Attorney General.

Controverted Elections. Lord Mahon.  
[For 2d reading.]

To alter and amend the Laws relating to Sewers. In Committee.] Mr. Christopher.

For relieving Poor Persons from Rates. [For 2d. reading.]

For amending the Tithes Commutation Act. [In Committee.]

##### Bills passed.

Halifax Small Debts Court.  
Admiralty Court.  
Metropolitan Police Courts.

#### THE EDITOR'S LETTER BOX.

If the "Professor of Constitutional Law" will send a short and authentic statement of his grievance, we will insert it, provided it be consistent with our regulations.

We thank "A Constant Reader" for his information regarding the construction of the 2d section of the 4 & 5 Wm. 4, c. 22, and will endeavour to procure an early report of the case.

"An Inquirer" does not very distinctly state how he conceives that the act 1 & 2 Vict. c. 29, in effect repeals the latter part of the 108th section of the Bankrupt Act, 6 Geo. 4, c. 16, and thus reinstate all the old mischiefs which that clause was intended to prevent.

We have made it a rule to abstain from inserting letters from parties in any matters pending in courts of justice; and we are, on the whole, inclined to think that Mr. Shaw's letter comes under that class. We are quite willing to insert any argument on the matter in question in the usual manner.

At Liverpool, where a more numerous body of the profession resides than at any other place except London, arrangements have been made for supplying the Legal Observer on the day of publication. Mr. Willmer of Church Street, Liverpool, has offered to supply the demand in his district. The publishers in other large town will soon follow his example.

The communications on the Attestation of Warrants of Attorney and Sheriffs' Poundage have been received.

E. B. shall be answered next week.

# The Legal Observer.

SATURDAY, AUGUST 17, 1839.

— " Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## ON LIMITATIONS TO THE SEPARATE USE OF A WOMAN.

THE subject of limitations to the separate use of a woman has recently been so much discussed in the profession, and is, indeed, of so much practical importance, that we need make no apology for endeavouring to state how the question now stands. We avail ourselves, for this purpose, of the number of Mr. Beavan's Reports just published, the first forty-two pages of which are devoted to cases on this subject, the principal of which is *Tullett v. Armstrong*, first reported by our own Reporter,<sup>a</sup> and more fully given by Mr. Beavan.

The estate for the separate use was originally recognized by Courts of Equity as a protection to a married woman. It acts in contravention and control of the legal right of the husband, and, as against his legal power, it is a sufficient protection; but the power of alienation remaining in the wife, the separate estate, unfettered, is no protection against the moral influence of the husband; and many instances have occurred, and daily occur, in which the wife, under the persuasion or influence of her husband, has been and is induced to exercise her power of alienation in his favour or for his benefit, and thus defeat the protection intended for her.<sup>b</sup> Hence arose the further restraint against anticipation by the wife, which has for the last fifty years been held to be legal, and has been declared by the great authority of

Lord Eldon, C., to be too well established to be unsettled.<sup>c</sup>

It is therefore disputed by no one, that if real or personal property be settled to the separate use of a married woman without anticipation, *she being married at the time*, that she cannot alienate her interest in favour of her husband or any one else while the coverture lasts. But as the clauses conferring the separate estate and annexing the fetter have both of them their effective operation only in the state of marriage, and are intended for the protection of married women, and not to restrain the incidents of property vested in persons under no legal incompetency, it has been determined that neither of them has any practical operation whilst the donee is single. It has been considered, that as an unmarried woman is as capable of enjoying and exercising the rights of property as a man is, the property must, in her, whilst unmarried, be accompanied with its ordinary incidents. Now, as a clause against anticipation, when property is settled on a man, will not prevent his alienation of it,<sup>d</sup> so neither will this clause restrain the alienation of property by a woman who has either never been married or who ceases to be married.<sup>e</sup> It should be observed, however, that Sir John Leach, M. R., held that where an estate was given to the separate use of a woman and accompanied by the fetter against anticipation, she was prevented from alienation even when single;

<sup>c</sup> *Jackson v. Hobhouse*, 2 Mer. 448.

<sup>d</sup> *Brandon v. Robinson*, 18 Ves. 429. S. C. 1 Rose, 197.

<sup>e</sup> *Jones v. Salter*, 2 Russ. & M. 203; *Woodmeston v. Walker*, 2 Russ. & M. 197; *Brown v. Pocock*, 2 Russ. & M. 210; S. C. 2 M. & K. 189; *Tullett v. Armstrong*, 1 Bea. 24.

<sup>a</sup> 17 L. O. See a reference to various articles on this subject, 15 L. O., p. 51.

<sup>b</sup> Per Lord Langdale, M. R., Beavan, 28. VOL. XVIII.—NO. 542.

but this decision was distinctly reversed by Lord Brougham, C.;<sup>f</sup> and is now, we believe, entirely exploded.

So far, we think, the law is settled; but on the other points connected with this subject a great difference of opinion still exists. In the case of *Anderson v. Anderson*,<sup>g</sup> leasehold property was given to a woman, then single, to her own sole use. The woman was single at the testator's death and for several years afterwards. Before she married she desired to have this property settled to her separate use: the intended husband refused, and the marriage took place without a settlement. After the marriage, the wife claimed the same property for her separate use, and although the husband insisted that the gift to the separate use of an unmarried woman was void, Sir John Leach, V. C., having previously granted an injunction to restrain the husband from receiving the rents, held that the wife was entitled to the leaseholds for her separate use, and his order was confirmed by Lord Eldon, C., before whom a motion to dissolve the injunction was made. Of this opinion also is Lord Langdale, M. R. "Property (says his Lordship) given to a woman for her separate use, independent of any husband, may, under the authority of this Court, be enjoyed by her during her coverture as her separate estate, although the property originally, or at any subsequent period or periods of time, became vested in her when discovered."<sup>h</sup> And of the same opinion also is Sir L. Shadwell, V. C.<sup>i</sup> But Lord Cottenham, C., is of a contrary opinion. "The only question (says his Lordship) is, whether when such fetters are attempted to be imposed upon an unmarried female legatee, and she marries without obtaining payment of the fund, such fetters are to operate during the coverture. Why were they inoperative before her marriage? Because they were inconsistent with the nature of her estate. Her estate and interest were therefore absolute before marriage, and the trustee held the legacy for her absolutely. She might have taken it herself, or have given it to any one, and why may she not by the act of marriage give it to her husband? Upon principle, therefore, I should not have had any doubt of the right of the husband, but the very point was decided in *Newton v. Reid* [4 Sim.

141, by Sir L. Shadwell, V. C., but see *Davies v. Thorneycroft*, *ubi supra*, decided by the same Judge, *contra*], and that case was alluded to, without any expression of disapprobation, by the Lord Chancellor, in *Brown v. Pocock*. I must therefore consider the point as settled."<sup>j</sup> And his Lordship has very recently declared his opinion on this subject to be unchanged.<sup>k</sup>

Another point is, whether a clause of this nature is exhausted by a first marriage, or will continue operative as against a second husband. In *Clark v. Jaques*,<sup>l</sup> an annuity was bequeathed to a lady, who was unmarried at the death of the testator, for her separate use, independent of any husband with whom she might at any time marry, and without power of anticipation. After the death of the testator, the annuitant married, became a widow, and contracted a second marriage. No disposition having been made by her when discovered, Lord Langdale, M. R., held that the separate use and anticipation clauses attached to the annuity during the second marriage; and he adhered to the same opinion in the subsequent case of *Dixon v. Dixon*.<sup>m</sup> But it is obvious that, if the doctrine in *Massey v. Parker* is to prevail, these cases cannot stand, as according to that, the first marriage would be held to be a gift to the first husband, and if the fund remained undisposed of, the second marriage would have the same operation in favour of the second husband.

We have now shewn how the question stands at the present time, and have only to regret that it remains in so unsettled a state.

### THE LONG VACATION.

THE Long Vacation has now again commenced, and we shall soon

— "remain

"The sad historian of the pensive plain."

The Courts of Chancery closed last Saturday; but the Lord Chancellor and Vice Chancellor came down on Thursday to deliver some judgments, and dispose of some few remaining matters. The best place for the vacation student—and there are many such we know—will soon be London. There, undisturbed, he may work away in good earnest. We remember a

<sup>f</sup> *Woodmeston v. Walker*; *Brown v. Pocock*, *ubi sup.*      <sup>g</sup> 2 Myl. & K. 427.

<sup>h</sup> *Tullett v. Armstrong*, Beavan, 32. See also *Scarborough v. Bormair*, Bea. 34.

<sup>i</sup> *Davies v. Thorneycroft*, 6 Sim 420.

<sup>j</sup> *Massey v. Parker*, 2 M. & K. 174.

<sup>k</sup> See 17 L. O. 95.

<sup>l</sup> 1 Beavan, 36.

<sup>m</sup> 1 Beavan, 40.

summer and autumn passed in this way with great pleasure and satisfaction; and we recommend such a course to our younger friends who are either behind-hand, or who wish to be before-hand. Parliament will rise, it is now said, on the 26th, and we shall take a short review of its labours in our next number. Very few acts have been passed of interest to the profession but the Police Acts; of these we shall soon be able to give a full account, and we shall lay them before our readers in a complete form. With these and other matters in store, we look forward to passing the vacation very pleasantly,—reviewing all that has been done, and looking forward to the future.

#### MEDICAL JURISPRUDENCE.— SUICIDE.

WE make the following extract from Doctor Ray's Medical Jurisprudence, which we shall shortly examine more particularly. After considering the class of suicides proceeding directly from insanity, he says—

“The suicidal propensity here described is universally attributed to pathological causes; but there is, besides, a large class of cases, in which no insanity of mind or body has been observed or suspected, though we have good reason to believe its existence. That one may be so harassed with the ills of life as to deem it best to rid himself at once of both, is not, perhaps, very strange; but when a person, apparently in good health, and surrounded with every thing that can make life dear to him, deliberately destroys himself without any visible cause, no balancing of motives or scrutiny of private circumstances can satisfactorily explain it, and we are obliged to consider it as a form of partial moral mania. Within a few years past, the attention of the medical profession has been directed to this subject, and their researches have abundantly established the fact, that the efficient cause is some pathological change, or physical peculiarity, not in every case easily defined or understood, but none the less certain on that account. Sometimes this monomania is attended apparently by no physical or moral disorder, the individual being driven by mere impulse to self-destruction, without being able to assign any reason therefore, real or imaginary. He feels that he is urged on by an impulse he can neither account for nor resist, deploras his sad condition, and beseeches his friends to protect him from himself. In another class of cases, some powerful physical or moral impression only is needed to call the suicidal propensity into fatal activity. The wonderful effect of mental influences on diseases of the bodily organs, is so common a fact, that we have no rational ground for dis-

believing a similar kind of agency in the production of the phenomenon. The distinguished accoucheur who attended the Princess Charlotte in her fatal confinement, observed a pair of pistols in the room to which he had retired for repose—the sight of which was sufficient, to a mind harassed by long and anxious attendance, and overwhelmed as it were, by the responsibilities of his situation, to provoke a desire which he may never have felt before—to die by his own hands. The case of Sir Samuel Romilly who committed suicide immediately after sustaining a severe domestic bereavement, strongly shews how far the propensity to commit this act is beyond the controul of moral principle or christian virtue, even when, as it was with him, previously contemplated, and conditionally determined on. Among the features which allay the propensity to suicide with ordinary mania, is that of its hereditary disposition. Dr. Gell knew several families in which the suicidal propensity prevailed through several generations. Among the cases he mentions, is the following very remarkable one: “The sieur Gauthier, the owner of various houses built without the barriers of Paris, to be used as entrepôts of goods, left seven children, and a fortune of about two millions of francs to be divided among them. All remained at Paris or in the neighbourhood, and preserved their patrimony; some even increased it by commercial speculations. None of them met with any real misfortunes, but all enjoyed good health, a competency and general esteem. All, however, were possessed with a rage for suicide, and all seven succumbed to it within the space of thirty or forty years. Some hanged, some drowned themselves, and others blew out their brains. One of the first two had invited sixteen persons to dine with him one Sunday. The company collected, the dinner was served, and the guests were at the table. The master of the house was called, but did not answer,—he was found hanging in the garret. Scarcely an hour before, he was quietly giving orders to the servants and chatting with his friends. The last, the owner of a house in the Rue de Richelieu, having raised his house two stories, became frightened at the expense, imagined himself ruined, and was anxious to kill himself. Thrice they prevented him, but soon after he was found dead, shot by a pistol. The estate, after all the debts were paid, amounted to three hundred thousand francs, and he might have been forty-five years old at the time of his death. “In the family of M. N. \* \* \*, the great-grandfather, the grandfather, and the father, committed suicide.”—*Functions of the Brain*, vol. 4, p. 213. Fabret, whose researches have thrown much light on this affection, believes that it is more disposed to be hereditary than any other kind of insanity. He saw a mother and her daughter attacked with the suicidal melancholy, and the grand-mother of the latter was at Charenton for the same cause. An individual, he says, committed suicide in Paris; his brother, who came to attend the funeral, cried



out on seeing the body,—“What fatality! my father and uncle both destroyed themselves; my brother has imitated their example; and twenty times during my journey hither, I thought of throwing myself into the Seine.”—*Sur la Hypochondria et Suicide*. Gall also relates the case of a dyer, of a very taciturn humour, who had five sons and a daughter. The eldest son, after being settled in a prosperous business, with a family around him, succeeded, after many attempts, in killing himself by jumping from the third story of his house. The second son, who was rather taciturn, had some domestic troubles, lost part of his fortune at play, and strangled himself at the age of thirty-five. The third threw himself from the window into his garden, but did not hurt himself; he pretended he was trying to fly. The fourth tried one day to fire a pistol down his throat, but was prevented. The fifth was of a bilious, melancholic temperament, quiet, and devoted to business; he and his sister shew no signs of being affected with their brother's malady. One of their cousins committed suicide.”—*Op. cit. sup. Vol. 4, p. 216*. Like other kinds of mental derangement, the suicidal propensity undergoes occasional exacerbations, from the influence of the seasons, periodical congestions, &c. The patient, perhaps, may have thrown off some of the gloom which overshadowed his mind, resumed a portion of his ordinary cheerfulness and interest in his affairs, courted the company of his friends, and thus excited strong expectations of a perfect cure, when suddenly his malady breaks out afresh; the sentiments are again perverted, the judgment disturbed, his breast torn with anguish and despair, and the utmost watchfulness is necessary to prevent him from accomplishing his fatal designs. Another trait which the suicidal propensity possesses in common with some nervous diseases, though not insanity, is its disposition to prevail epidemically, as it were, in consequence of that law of our constitution, not well understood, called sympathy. It is a matter of common observation, that the occurrence of one case of suicide is followed, oftener than not, by one or more in the same community. In a sitting of the academy of Medicine at Paris, a few years since, it was mentioned by M. Costel, that a soldier at the Hotel des Invalids having hanged himself on a post, his example was followed in a short time by twelve other invalids; and that by removing the fatal post, the suicidal epidemic was arrested. It is related that thirteen hundred people destroyed themselves in Versailles in 1793; and in one year, 1506, sixty perished by their own hands in Rouen.—*Burrow's Commentaries on Insanity, p. 438*.

The analogies thus presented between the suicidal propensity and insanity, or other nervous diseases, in its symptoms, are also strengthened by the pathological changes observed after death. In the larger proportion of instances, where examination is made, the brain or abdominal viscera are found to have suffered organic lesions, more or less extensive, which,

when confined to the latter, have affected the mind by sympathetic irritation. Even in those cases, where the fatal act was preceded by no indications of disease, or other symptoms that excited suspicions that the individual was tired of life, dissection has often revealed the most serious disease, which must have existed for some time previous to death. True, the most careful dissection will sometimes fail of revealing the slightest deviation from the healthy structure, and it is not necessary to the support of the above views of the nature of this affection, that it always should. For here, as in mania, sometimes the pathological change may not have gone beyond its primary stage, that of simple irritation, which is not appreciable to the senses, but the existence of which we are bound to believe on the strength of the symptoms.

The Author next proceeds to state the legal consequences of suicide.

“By the common law of England, a *felo de se* forfeited all chattels, real or personal, which he had in his own right, and various other property, and his will became void as to personal property. Blackstone's Commentaries, vol. 4, p. 190. Such severity has been generally avoided, by the almost universal practice of coroner's juries returning an inquest of insanity. At present, the fact of suicide has no other importance than what it derives from its connection with the mental derangement, which may be supposed to have given rise to it. Courts would very justly refuse to consider it as sufficient proof of insanity, in the absence of other proofs, because it might have been the act of a rational mind, and because, too, if it really did spring from insanity, the delusion might have been so circumscribed as not to have perverted the judgment in regard to testamentary dispositions, and other civil acts. The principle adopted in the Ecclesiastical Courts is, that in cases of doubtful sanity, among which those of suicide must always be ranged, the validity of the individual's testament must be determined solely by the character of that instrument itself. Here is an inherent difficulty that courts will never be very anxious to encounter, and that is, to determine the exact connection of suicide with insanity, supposing the latter to be admitted, in point of time. When this act is the only proof we have of mental derangement, we are left without the means of ascertaining when this condition began to exist or to disappear; and consequently nothing can be more difficult than to decide within what time, either before or after the suicidal attempt, the individual can be pronounced insane. It not uncommonly happens that a person kills himself, or makes the attempt, shortly after making his will, when the question requires a judicial decision, whether or not the insanity which led to the fatal act existed at the time of making the will. The practice has usually been, if there were no other evidence of unsound mind, either in his conduct or conversation, or in the testamentary dispositions themselves, not to impeach the

testator's sanity. In *Burrows v. Burrows* (1 Haggard's Eccl. Reports, 109) it was held by Sir John Nicholl, that where there was no evidence of insanity at the time of giving instructions for a will, the commission of suicide three days after, did not invalidate the will, by raising an inference of previous derangement. Chief Justice Parker also held that suicide, committed fifteen days after the date of the person's will, was not sufficient, in the absence of other evidence to prove him insane, and thus invalidate the will on account of the difficulty we have just mentioned." His language was, that, "even if the act itself [suicide] should be considered as proof demonstrative that the reasoning faculty was disturbed at the time of its commission, the difficulty of ascertaining with precision the very inception of derangement, weakens its force in relation to any antecedent act." *Brooks and others v. Barrett and others*, 7 Pickering's Reports, 94. Where however the unreasonableness of the will itself raises a suspicion of the testator's sanity, the act of suicide within a short time will always be strongly confirmatory of it, and, in connection with attending circumstances, may in some instances, turn suspicion into conviction. There will be a little danger of going wrong in any cases of this kind, if we are willing to be governed in our decisions by the principles of equity and common sense, rather than by technical distinctions and antiquated maxims. If the will be a rational act rationally done, a suicidal act or attempt ought not to invalidate it, because the presumption is, either that the will was made before the mind became impaired or that the derangement was of a kind that did not prevent the judgment from using its ordinary discretion in the final disposition of property. If on the contrary, it be an unreasonable act, and especially if it be contrary to the previously expressed intentions of the testator, then the act of suicide will be in itself strong proof that the mind was impaired at the time of making the will.

## LAW DICTIONARIES FOR PRACTITIONERS AND STUDENTS.

WE are induced to notice as well the various Law Dictionaries which have been recently published, as those which formerly rejoiced in the approval of the profession. We shall take them in chronological order, and give the substance of the pretensions of each author, as stated by himself.

*Blount's Law Dictionary and Glossary*, interpreting such difficult and obscure words and terms as are found in our Common, Statute, Ancient and Modern Laws. Third Edition, enlarged. By W. Nelson, Esq., folio, 1717.

*Cowell's Law Dictionary*, or the Interpreter of Words and Terms used either in the Common or Statute Law of the Realm; also, the

tenures and jocular customs, with the ancient names of places and surnames, folio, 1727.

*Terms of the Law*, or certain difficult and obscure words and terms of the Common and Statute Laws of this Realm now in use, explained in French and English, in opposite columns, 8vo., 1721 and 1742.

*Cunningham's Law Dictionary*, 2 vols. folio. Third Edition, 1782.

*Burn's Law Dictionary*, 2 vols. 8vo. 1792.

*Pott's Compendious Law Dictionary*, intended for the use of the Country Gentleman, the Merchant, and the Professional Man. Second Edition, 12mo. 1813.

*Williams's Compendious Law Dictionary*, 8vo. 1816.

*Whishaw's New Law Dictionary*, containing a concise exposition of the mere terms of Art, and such obsolete words as occur in old legal, historical, and antiquarian writers, 8vo. 1829.

*Tomlins's Law Dictionary*, explaining the rise, progress, and present state of the British Law; defining and interpreting the terms or words of art, and comprising also copious information on the subjects of trade and government. Fourth Edition, with extensive additions, embodying the whole of the recent alterations in the law. By T. C. Granger, Esq., 2 vols. 4to. 1835.

*Tomlins's Popular Law Dictionary*, familiarly explaining the terms and forms of English Law, adapted to the comprehension of persons not educated for the Legal Profession, and affording information peculiarly useful to magistrates, merchants, parochial officers and others. 12mo. 1838.

*Holthouse's New Law Dictionary*, containing explanations of such technical terms and phrases as occur in the works of the various law writers of Great Britain; to which is added an Outline of an Action at Law and of a Suit in Equity, designed expressly for the use of students. 12mo. 1839.

We question whether there ought to be any difference between a Dictionary compiled for the Student and one compiled for the Practitioner. Neither of them expect more in a Dictionary than the explanation of words or technical terms, and the more concise the exposition, provided it be clear and accurate, the better. Mr. Holthouse animadvertes on the more elaborate class of Dictionaries, as resembling Cyclopædias, and yet he candidly avows that many of the explanations he gives are like Essays. This is the common error of human beings: their precepts and practice are at variance.

On the whole, we think that Mr. Whishaw's book is the "best of the bunch." Although there may be some explanations in his Dictionary which are rarely required, the work is within moderate compass; and it should be recollected that the student reads only such parts as he immediately requires. In the Dictionary of a Language, a consi-

derable proportion of the words are seldom used, but it would be deemed very defective if it were confined to expressions in ordinary parlance. So in the Law, or any other Science, the Student should be supplied with the meaning of every word or technical term with which he may meet in the course of his reading. Brevity in compilation must be effected, not by omitting the word altogether, however seldom it may be wanted, but in condensing the explanation of it.

We have seen the plan of a Law Dictionary which comes nearer to what such a work professes to be, and what we think it ought to be, than any of the publications we have noticed; but amidst such a host of competitors, we doubt whether the Book will be successful; and if it should be so, new rivals will soon appear, following the same plan, or endeavoring to improve upon it. The mischief of many writers being engaged on similar works, or adopting similar methods, is two-fold:—the reader is perplexed by the multitude of books, and the writer, ill-rewarded for his labours, relaxes his industry.

## NEW BILLS IN PARLIAMENT.

### METROPOLIS SEWERS.

THIS bill, for the better regulation of Metropolitan Sewers, was brought into the House of Commons on the 1st instant. The general divisions of the bill are as follows:

I. Of the act. II. Recited acts and enactments thereon. III. Districts. IV. Present commissioners. V. District Court. VI. Metropolitan Court. VII. Officers. VIII. Rules and regulations. IX. Accounts. X. Rates. XI. Sewers. XII. Contracts. XIII. Borrowing money. XIV. Purchase of land. XV. Sale of land. XVI. Miscellaneous clauses. XVII. Future commissioners. *Schedule.*

The following is an abstract or analysis of the bill

#### *Preamble :*

Existing general laws of sewers have reference immediately to land, and not to house drainage.

House drainage can be effected concurrently, and without interruption to land drainage.

No uniformity of practice in the proceedings of the several Courts of Sewers, occasioning injury and uncertainty.

Expedient to repeal certain acts, to re-enact portions, and to consolidate the whole, with additional provisions, into one act.

The persons to carry into operation such laws have heretofore been appointed (virtually for life) solely by letters patent from the Crown, in the city excepted.

Expedient to effect some change in the mode of appointing commissioners.

*The statutes recited now in force for the districts from 6 Henry 6 to 4 & 5 Will. 4.*

*The Letters Patent recited, viz. for the*

Westminster and part of Middlesex Commission.

Holborn and Finsbury Commission.

Tower Hamlets Commission.

Saint Katherine's Commission.

Surrey and Kent Commission.

Poplar or Blackwall Commission.

Expedient to make provision relative to money borrowed.

#### *I. Of the act :*

1. Commencement of act.

2. Act may be altered this session.

3. Interpretation clause. *Commissioners : Courts of Sewers : Persons : Number : Oath : Lands and tenements : Walls : Sewers ; Districts.*

4. Public act.

5. Act extends to the city, and to parts of Middlesex, Surrey, and Kent.

6. Act relates to the surface and sullage drainage of district.

#### *II. Recited acts and enactments thereon :*

1. Certain recited acts repealed, so far as relate to the districts of this act.

2. Certain acts not revived.

3. Other recited acts repealed, except as to purchases already made, &c.

4. Existing mortgages or assignments charged upon the rates made under recited acts to continue in force, and to be a charge on the rates levied by this act.

5. Old books of proceedings under recited acts to be evidence.

Officers under recited acts to hold their respective situations, and to account for monies.

Persons owing money under recited acts to account.

6. Rates and contracts made under recited acts to continue in force.

7. Not to make void proceedings under recited acts.

8. All orders made prior to the passing of this act to be in force, unless repealed.

9. Commissioners of the Western District to carry into effect a certain recited act.

#### *III. Districts :*

1. The City of London, and parts of Middlesex, Surrey and Kent, constituted into sewer districts.

The union of such districts to be the Metropolitan District, and to be under the control of the Metropolitan Court.

2. Borders and confines of district courts ascertained.

Metropolitan Court to determine districts and to settle disputes.

3. Provisions of this act, when necessary, to be carried into effect in places adjoining district.

4. Metropolitan Court to make a survey and plan of district.  
Commissioners to be furnished with copies thereof.

**IV. Present Commissioners :**

1. Certain of the present commissioners to continue during term limited by this act.  
(*City commissioners.*)—Present commissioners continued.
2. Certain members of Parliament and others to be commissioners.
3. Oath to be taken by commissioners and members of Metropolitan Court.  
Penalty on persons acting not sworn.

**V. District Court**

*Constitution of the District Courts ;*

1. Court of Sewers constituted a Court of Record.
2. Business of commissioners to be transacted in open court.
3. Meetings of commissioners.  
Orders, &c. made by six commissioners in Court to be good; names of commissioners voting to be entered in the minutes.
4. Notice of meeting. Meetings on emergencies.
5. Chairman to be appointed, with salary, with the consent of the secretary of state.
6. Commissioners interested to have no voice.
7. Executive committee and members of the Metropolitan Court to be appointed.  
Expences to be allowed, with consent of Secretary of State.
8. Chairman of court to be the chairman of the executive committee.  
Powers and duties of the executive committee.

**VI. Metropolitan Court.**

*Constitution of the Metropolitan Court.*

1. Certain persons of the District Courts to be members of such Court.
2. Certain members of Parliament and others to be, and may name persons to be, members of such Court.
3. First meeting of the Metropolitan Court. To meet at Somerset House; to elect a president &c. To be an open Court.
4. To make rules, forms, &c. for uniformity of practice. District Courts to revise same.
5. May be convened by any Court at any time.
6. To review and control all District Courts.

**VII. Officers :**

1. Power of Court to appoint officers. Officers to give security by bonds with sureties.
2. Officers not to be concerned in any contract.
3. Treasurer not to hold any other office under the commissioners.
4. Officers not to take any fee or reward.
5. Removing officer from the possession of the property of the Court.
6. Bailiff and others may be sworn in as constables.

**VIII. Rules and Regulations :**

1. Commissioners to make laws and ordinances. To be received in evidence. Revocation of orders.
2. The general proceedings, &c. of commissioners to be entered in a book. To be evidence. To be open to rate payers.
3. Peace officers to obey orders of commissioners.
4. Recovery of fines, &c.
5. Form of warrant for levying fines, &c.
6. Form of commitment.
7. Keeper of Gaol to receive any person committed by the Court.

**IX. Accounts.**

1. Secretary of State to appoint an auditor of the accounts of the Courts.
2. Treasurer, collector, and other officers to account according to the orders of the Court.
3. Account of expenses of commissioners to be allowed, subject to revision of Secretary of State.
4. Accounts to be kept of receipts and disbursements. And to be open to inspection of rate payers.
5. The Court to make out an annual account of sums assessed and expended in each level or parish. Overseers and rate payers may obtain copies.

[To be continued.]

**LIABILITY OF CLERKS IN COURT  
ON THEIR UNDERTAKING TO  
PAY COSTS.**

By the 42d of the Chancery Orders, "It is ordered that the deposit upon every petition of appeal or re-hearing be increased to 20*l.*, to be paid to the adverse party, when the decree or order appealed from is not varied in any material point, together with such further costs occasioned by the appeal or re-hearing, unless the Court shall otherwise order."

A petition of appeal against a decree of his Honor the Vice Chancellor was presented by one of three defendants, and the party appealing was out of the jurisdiction of the Court. At the foot of such petition of appeal the Lord Chancellor, in the usual form, directed, upon the petitioner or his clerk in court subscribing this petition, thereby consenting to pay such costs (if any) as the Court shall think fit to award in respect of any proceedings had since the said decree, and upon his depositing 20*l.* with the registrar in a week, that the appeal should be set down to be heard before him next after the re-hearings and appeals already appointed.

The clerk in court's undertaking is as follows:—"I consent to pay such costs (if any) as the Court shall think fit to award in respect of any proceedings had since the said decree. *A. B.*, clerk in court for petitioners." The clerk in court charges 6*s.* 8*d.* for signing this consent.

Upon the petition being lodged an order is

drawn up and served on the respondent, in the following form:—"Upon the humble petition of the defendant, this day preferred unto the Right Honorable the Lord High Chancellor of Great Britain, for the reasons therein contained, and the petitioner's clerk in court having subscribed the said petition, thereby consenting to pay such costs (if any) as the Court shall think fit to award in respect of any proceedings had since the decree, dated, &c., and upon the petitioner depositing 20*l.* with the registrar in a week, it is ordered that the petitioner's appeal be set down to be heard before his Lordship next after the re-hearings and appeals already appointed, and hereof give notice forthwith."

The Lord Chancellor gave his judgment on hearing the petition of appeal, and the following order was made:—"His Lordship doth order that the said decree be affirmed, and the said petition of appeal be dismissed: And it is ordered, that the sum of 20*l.* deposited with the registrar by the petitioner on setting down the said appeal, be paid to the plaintiffs: And it is ordered, that the defendant do pay unto the plaintiffs their further costs occasioned by the said petition to be taxed by the Master of this Court."

The Master, by his certificate, certified that "In pursuance of an order made in this cause upon the petition of appeal of the defendant, he had been attended by the clerks in court and solicitors for the plaintiffs and for the said defendant, and he had taxed the further costs occasioned by the said petition, amounting, after deduction of the deposit in the said order mentioned, to the sum of 83*l.* 14*s.* 3*d.*, at the sum of 50*l.* 2*s.*, including 1*l.* 2*s.* 6*d.* for a subpoena and personal service thereof, but which should be deducted in case the said taxed costs were paid before such subpoena was sued out."

The defendant, who had appealed, being out of the jurisdiction, it was useless suing out any subpoena against him, and application was then made to the clerk in court for payment pursuant to the consent, which he refused to pay, on the ground that he was not personally liable. Application was then made by motion to the Lord Chancellor against the clerk in court for payment, which motion was refused, with costs. The Chancellor declined to give any opinion on the construction to be put on the consent.

The question is, whether the consent amounts to a guarantee to pay such costs as the defendant would be liable to pay under the Chancellor's order made in conformity with the 42d order, because there are other costs awarded to be paid. In the case of *Mason v. Pritchard*, 12 East, 227, it was held that a party signing a guarantee, the words are to be taken as strongly against the party as the sense of them will admit of.

This case was laid before counsel, to advise whether the consent in question does not amount to a personal undertaking by the clerk in court to pay the 50*l.* 2*s.* the ultra costs as taxed; and if so, whether an action

at law will not lie against him for the amount and the costs of the refused motion.

His opinion is "that the consent does not make the clerk in court personally liable, for the form '*A. B.*, clerk in court for the petitioners,' shews that he is signing as agent or clerk for his clients, not on his own account. But, secondly, if it is alleged to be a guarantee, it contains no sufficient consideration expressed; and if it did, the name of the party with whom the agreement is made does not appear. But if any action could be maintained in respect of the costs of the appeal, it is clear it could not extend to the costs of the refused motion, because that was a proceeding adopted erroneously and without any cause."

The Lord Chancellor ought, it is submitted, as the matter has been brought before him, to put an end to such an order, for it clearly is not necessary, unless the clerk in court is introduced in the light of a surety, and personally liable. No legal man can doubt that the Court possesses a discretionary power to give costs against any party in the suit. Then if that is so, of what use is the order at the foot of the appeal and the consent of the clerk in Court, if it is not meant to make him personally liable? and why is the fee of 6*s.* 8*d.* to be paid to him for nothing?

The 42d order is positive to deposit 20*l.*, and pay such further costs, &c. Now the order at the foot of the petition of appeal, and the consent, qualifies this order by introducing the words "*if any*," and the words "*in respect of any proceedings had since the said decree*."

The clerks in court contend that the words "*had since the decree*," do not mean the costs of appeal, because that is a proceeding "to be had."

## LAW OF ATTORNEYS.

### STRIKING OFF THE ROLL AT THE ATTORNEY'S REQUEST.

It appears from the following decision that the object an attorney has for being struck off the roll need not be stated on the affidavit in support of his application for that purpose.

*Barstow* moved that an attorney might be struck off the rolls at his own request, on an affidavit, stating that he did not anticipate any application being made against him, but it did not state what was the attorney's object in being struck off the roll. It was submitted that through it was usual to state the object, yet that it was unnecessary, and that the application might therefore be granted.

*Patteson, J.*—I do not know any reason why the object should be stated, though it is usual to do so. The application may be granted.

Rule made. *Ex parte Charnock*, H. T. 1839; 1 W. W. & Hod. 548; but see *Ex parte Missing*, Will. Wol. & Dav. 73, where an opposite opinion was intimated.

## PRACTISING IN SEVERAL COURTS.

It has been decided that an attorney, re-admitted in the Court of Queen's Bench, is by such re-admission entitled, under 1 & 2. Vict. c. 45, to practise in the other Courts.

*Martin* moved to re-admit in this Court an attorney who last Term had been re-admitted in the Court of Queen's Bench. The statute 1 & 2. Vict. c. 45, s. 3, which enacts that attorneys admitted in one Court shall be thereby entitled to practise in the others, had been thought by the officer not to apply to a case of re-admission.

*Sed per Curiam*,—If he is re-admitted in the Queen's Bench, he is admitted in the Queen's Bench, and then he may practise here. The application is unnecessary. *Ex parte Thompson*, E. T. 1839. 5 Bing. N. C. 380.

## PARTIES ENTITLED BY SURVIVORSHIP OR ACCRUER.

We have received the following report of the case of *Murray v. Samson*, decided by the *Vice Chancellor*, on the 26th April last, and believe its accuracy may be relied on.

This was a petition, praying that the sum of 224*l.* 1*s.* 11*d.*, being one moiety of 444*l.* 3*s.* 10*d.* 3*l.* per cent. consols, standing in the name of the accountant general of this court, in trust in this cause, "The account of the defendants William Hamilton, James Hamilton, Jane Hamilton, and Frederick Hamilton, the children of William Hamilton;" and the sum of 3*l.* 6*s.* 7*½d.*, being one moiety of the sum of 6*l.* 13*s.* 3*d.*, cash in the bank, placed to the credit of the like account, should be transferred and paid to the petitioner, James Hamilton; and that the sum of 224*l.* 1*s.* 11*d.*, 3*l.* per cent. consols, being the other moiety of the said 444*l.* 3*s.* 10*d.*, and 3*l.* 6*s.* 7*½d.*, being the other moiety of the said 6*l.* 13*s.* 3*d.*, cash, should be paid and transferred to the petitioner Thomas Jarvis, in right of the defendant Jane Isabella, his wife, formerly, Jane Isabella Hamilton, Spinster.

The petition set forth that by a decretal order made in this cause, bearing date the 7th day of July, 1830, it was amongst other things declared, that the sum of 2000*l.* due by the defendant William Hamilton to the testatrix at the time of her decease, was to be considered as part of the residue of the estate; and that the residue of the said testatrix's estate ought to be considered divided into three equal parts; and that the defendants William Hamilton, James Hamilton, Jane Isabella Hamilton, and Frederick Hamilton, the children of the defendant William Hamilton, were entitled to one-third part of such residue; and that the said sum of 2000*l.* was to be taken as part of such third part thereof; and it was also declared that the said defendants, the children of the defendant Robert Hamilton, and the chil-

dren of the defendant William Hamilton, took vested interests in their shares of such residue on attaining their ages of twenty-one years; and it was ordered that one-third part of the residue of the 7092*l.* 8*s.* 2*d.* 3 per cent. consols, after the sale of part thereof as thereinbefore directed, and 122*l.* 14*s.* 10*d.* one-third part of 368*l.* 4*s.* 6*d.* cash, when paid in as thereinbefore also directed, should be carried over to an account in this cause, entitled "The account of the defendants William Hamilton, James Hamilton, Jane Hamilton, and Frederick Hamilton, the children of William Hamilton, subject to the further order of the Court." And it was ordered, that after the carrying over as thereinbefore directed to the before mentioned account, and after payment of the sum therein also directed, the residue of any cash which might be in the bank placed to the credit of the defendants William Hamilton, James Hamilton, Jane Hamilton, and Frederick Hamilton, the children of William Hamilton, should be laid out in the purchase of 3 per cent. consols in their names, and with the privity of the said Accountant General, in trust in this cause, to the like account, subject to the further order of the Court.

That by certain orders, bearing date respectively the 22d day of December, 1830, and 30th day of November, 1833, the shares of the said William Hamilton, James Hamilton, and Jane Isabella Hamilton, were ordered to be paid to them, they the said William Hamilton, James Hamilton, and Jane Isabella Hamilton, having respectively attained their age of twenty-one years.

That on the 27th day of February, 1834, the said Jane Isabella Hamilton intermarried with, and that she was then the wife of the petitioner Thomas Jarvis.

That on the 5th day of January, 1838, the said William Hamilton the son, died intestate, leaving the said defendants, William Hamilton, the father, James Hamilton, Jane Isabella Jarvis, and Frederick Hamilton, him surviving.

That letters of administration of the estate of William Hamilton, deceased, had been granted to his Father William Hamilton, and who had thereby become and was his legal personal representative.

That after the death of the said William Hamilton, the said Frederick Hamilton died without having attained his age of twenty-one years, leaving the said William Hamilton, the father, James Hamilton, and Jane Isabella Jarvis, his brother and sister, him surviving.

That there was standing to the credit of said Frederick Hamilton, deceased, the sum of 444*l.* 3*s.* 10*d.* consols, and in cash 6*l.* 13*s.* 3*d.*

That the petitioners James Hamilton and Thomas Jarvis, in right of the said Jane Isabella his wife, as the only two surviving children of the said William Hamilton, had become and were entitled under and by virtue of the will of the said testatrix, to the said share of the said Frederick Hamilton deceased, in equal moieties.

Mr. Teed, for the petitioners, contended that

as they were the only two surviving children living at the decease of Frederick Hamilton, they were entitled to his share equally between them.

Mr. *Knight Bruce* appeared for William Hamilton, the father and representative of his deceased son William, and on his behalf submitted that the father and personal representative of the son who died after having attained twenty-one years was entitled to participate with the petitioners in Frederick's share, for he contended, that to entitle the petitioners to the fund equally between them, the youngest son must have lived to attain twenty-one years, which he did not do, and the fund must consequently be divisible into thirds.

The *Vice Chancellor*, after reading the words of the will, the petition, and the report of the case, 3 Sim. 356, said that he thought the shares of the children should have been payable after the youngest child had attained twenty-one years, but as three of such children had attained twenty-one, and had received their shares, it only remained for him to say who were the parties entitled to the share of the youngest child, who had died under twenty-one; whether the petitioners as the two surviving children, were entitled to it between them, or whether the father of a deceased son, who died after having attained the age of twenty-one years, was also entitled, and he was of opinion that the representatives of the deceased son who died after he had attained twenty-one, was entitled with the petitioners; and ordered the fund in question to be divided into thirds.

## SELECTIONS FROM CORRESPONDENCE.

### FRIVOLOUS DEFENCES.

Sir,

AMONG the many defects in the law, perhaps the most growing evil is the system of pleading adopted by defendants for delay; and as it is an evil which owes its birth to the ingenuity of pleaders and attorneys, I think for the honour of the profession it ought to be remedied, and the Law Institution ought to bring it before the Judges, and by their united endeavours to destroy the mischief without invalidating the means of a real defence. The following are some few examples of the system:—

An acceptance is due just after Trinity Term. Defendant knows you must try (if you wish judgment before November) at one of the assizes, he therefore pleads he did not accept; by this means he gets six weeks or two months grace at a calculated expence. Just before the trial, or perhaps at an earlier day, he offers you a *cognovit*, payable as soon as you can get judgment: thus prostituting the time which is allowed for an honest defence to merely gaining time to suit his own purposes, without regard to the inconvenience and risk of costs to which he puts the plaintiff.

Another plan where the acceptance is due as before mentioned, is to plead such pleas as are demurrable; or if you reply, cause you to reply double; and then defendant demurs: thus in either case, obtaining a demurrer and throwing you over to November, or you must risk a summons to set aside the demurrer as frivolous; and as all these pleas are drawn with a view to evade being palpably frivolous, and require argument to prove them so, no prudent attorney, unless he is deeply versed in special pleading, would attend such summons except by counsel. If your summons is dismissed, (which most of the Judges will do if the demurrer will bear the slightest argument) you are thus fully fixed until November, unless the bill happens to have been given the plaintiff for goods, and you can prove their order and delivery; then you may enter a *nolli prosequi* as to your bill count, and proceed on your other counts; but you can only do this on payment of costs as to that count. Thus defendant either gains time, or makes you pay costs to some extent for pursuing your just claim.

Another plan is to find out some old statute affecting the question in dispute, and plead that in bar with other pleas which may invite a demurrer. For instance,—to a tailor's bill, admit the debt, but plead in bar that the contract is in contravention of a statute of (I think) Elizabeth, which prevents other than metal buttons (the act being in favour of the Birmingham trade) being allowed to be put on cloth.

The remedy for all these kinds of pleas which I would suggest is, that all pleas in answer to book debts and bills of exchange, and contracts under seal, should be verified by affidavit, unless otherwise ordered by Judge on summons; and at present it appears to me this exception would be sufficient for all practical and really honest defences.

These hints are given to you, Mr. Editor, to lay before the public in any shape you please. What I seek is, that the profession should not be charged (for the acts of a few) with employing their skill to defend the dishonest debtor to the injury of his real creditor.

AN OCCASIONAL CONTRIBUTOR.

### ATTESTATION OF WARRANT OF ATTORNEY AND COGNOVIT.

*Witness* to the due execution of this warrant of attorney and defeazance respectively [or of this *cognovit actionem*] by the said *A. B.* on the day of \_\_\_\_\_, one thousand eight hundred and thirty-nine, *E. F.*, of No. 9, King's Bench Walk in the Inner Temple, London, one of the attorneys of her Majesty's Court of \_\_\_\_\_ at Westminster; and *G. H.*, of Elm Court, Temple, London, clerk to Messrs. *L. M.* and *N. O.*, of the same place, attorneys at law: And the said *E. F.* hereby declares himself to be the attorney of the said *A. B.*, expressly named by the said *A. B.*, attending on his behalf and at his request; and that he the said *E. F.* subscribes his name hereto as such at-

torney and witness, and that he did inform the said *A. B.* the nature and effect of this warrant of attorney and defeazance respectively [or of the said cognovit] before the execution thereof.

(Signed) *E. F.*, Attorney and Witness.  
*G. H.*, Witness.

I submit it would be much better that the date of the execution of the instrument should appear in the attestation as well as in the affidavit of the due execution.

A SOLICITOR AND SUBSCRIBER.

#### SHERIFFS' POUNDAGE, &c.

I am told that the sheriff may, under an act lately passed, levy or take under a *ca. sa.* his poundage and the expenses of the execution, but that it is illegal for an attorney to indorse such a direction on the *ca. sa.* itself, although he may do so on a *feri facias*. Is this so? and if so, why the difference? How can the sheriff know what to levy for the expenses of the writ of execution, the amount of which varies?

A CLERK.

#### WHERE RE-ADMISSION UNNECESSARY.

A young man who was examined and admitted an Attorney of the Courts of Westminster and also in Chancery a term or two ago, but who has subsequently taken a Managing Clerk's situation for two or three years, wishes to know if he will be subject to re-admission, or re-examination and re-admission, if he does not take out his annual certificate for that period, or whether, *never having taken out his certificate*, he will be enabled to do so without re-admission and payment of arrear of duty at the expiration of his engagement as managing Clerk.

E. B.

[It is clear that no *re-examination* will be necessary, and we think no *re-admission* will be requisite if the party does not in any respect practise as an Attorney, and has never taken out a certificate. See 13 L. O. 259, and *Ex parte Jones*, 2 Dowl. Pr. C. 551; *Ex parte Marshall*, 6 Ib. 526. Ed.]

### SUPERIOR COURTS.

#### Lord Chancellor's Court.

LEASE BY PAROL.—APPORTIONMENT OF RENTS.—CONSTRUCTION OF ACT,  
4 & 5 W. 4, c. 22.

*A lunatic's estates in fee were let by parol agreement from year to year, the rents payable half-yearly at Lady-day and Michaelmas, and the lunatic died in June: Held, that the proportion of the half-year's rents from the last Lady-day before the lunatic's death up to the day of his death, was not apportionable under the act 4 & 5 W. 4, c. 22.*

This was a petition presented under the act 4 & 5 W. 4, c. 22, intitled "An act to amend

an act of the 11th G. 2, respecting the apportionment of rents, annuities, and other periodical payments." The petition stated, among other things, that Thomas Markby was duly found a lunatic in the year 1797, and the care of him was committed to Edward Gilham, upon whose decease in the year 1815, the petitioner William Henry Markby was duly appointed committee of the person and estate of the said lunatic. That the lunatic died on the 28th day of June, 1838, and by an order of this Court, made on the 10th of October last, it was referred to the Master to take and pass petitioner's accounts: That the Master, by his report dated last March, stated among other things, that the proportional part of the rents of the lunatic's real estates from Lady-day, 1838, to the day of his death was 196*l.* 11*s.* 9*d.* And by affidavits laid before him, he found that all the lunatic's real estates were let to tenants from year to year, without any leases, agreements or instruments in writing between them and the lunatic or his committee, and the rents became due at Lady-day and Michaelmas in every year, and they were received by the petitioner up to Lady-day, 1838, and he had not received any subsequently: That after the lunatic's death, Edward Gilham Markby, his heir-at-law, entered into possession of his real estates, and claimed all the rents from Lady-day, 1838, to the day of the lunatic's death as not apportionable between the lunatic's personal representative and the heir-at-law, and therefore the petitioner forbore to collect the same; That on the 4th of July, 1838, administration with the will of the lunatic annexed, was granted to the petitioner, and he thereby became the lunatic's sole personal representative, and he was advised that the said proportion of the rents of the lunatic's real estates, which accrued due from Lady-day, 1838, to the lunatic's death on the 28th of June, was apportionable under the act 4 & 5 W. 4, c. 22, and that petitioner, as personal representative of the lunatic, was entitled thereto. The petitioner prayed for an order on the heir-at-law to pay the said sum of 196*l.* 11*s.* 9*d.* to the petitioners.

Mr. Sidebottom for the petitioner.—The lunatic had been tenant in fee of lands in Cambridgeshire, which had been let by parol demise to tenants from year to year. Rents reserved on parol demises were, on the substantial and grammatical construction of the act, equally apportionable as if they had been reserved by an indorsement in writing. The act was passed to remove doubts that were entertained "whether the provisions of the act 11 G. 2, c. 19, applied to all cases in which the interests of tenants determined on the death of the person by whom such interests were created, and on the death of any life or lives for which such person was entitled to the lands demised;" and it recited that "whereas by law rents, annuities, and other payments due at fixed or stated periods are not apportionable, except express provision be made for the purpose, from which it often happens that persons (and their representatives), whose in-



come is wholly or principally derived from these sources, by the determination thereof before the period of payment arrives, are deprived of means to satisfy just demands, and other evils arise from such rents, &c. not being apportionable, which evils require remedy," and then it was enacted, "that rents reserved and made payable on *any demise or lease* of lands, &c. which have been and shall be made; and which leases or demises determined or shall determine on the death of the person making the same (although such person was not strictly tenant for life thereof), or on the death of the life or lives for which such person was entitled to such hereditaments, shall, so far as respects the rents reserved by *such leases*, and the recovery, &c. be considered as within the provision of the said recited act." Now that section did not require the leases or demises to be in writing. A lease properly signifies "a demise or letting of lands, and it is sometimes made by record, as by fine; sometimes by writing, and is then called a lease by indenture; and sometimes also it is by word of mouth, without any writing, and then it is called a *lease parol*, and hence the division of a lease-parol and a lease in writing."<sup>a</sup> The second section of the act applied to tenants in fee, such as the deceased lunatic. The words of that section, on the true construction and grammatical reading of them, did not require the letting of the lands to be by lease in writing, no more than the first section did, and it was clear that rents reserved on parol leases were apportionable under the act. By the second, it is enacted that "from and after the passing of this act all rents service, reserved on any lease by a tenant in fee, or for any life interest, or by any lease granted under any power, (and which leases shall have been granted after the passing of this act), and all rents charge and other rents, annuities, pensions, dividends, moduses, compositions, and all other payments of every description in the United Kingdom of Great Britain and Ireland made payable or coming due at fixed periods under any instrument that shall be executed after the passing of this act, or (being a will or testamentary instrument), that shall come into operation after the passing of this act, shall be apportioned to and in such manner that on the death of any person interested in any such rents, &c. or other payments as aforesaid, or in the estate, &c. from or in respect of which the same shall be issuing or derived, or on the determination by any means whatsoever of the interest of any such person, he, she, his or her executors, administrators, or assigns, shall be entitled to a proportion of such rents, &c. according to the time which shall have elapsed from the commencement or last period of payment thereof respectively, &c." The first clause of the section, "all rents service, reserved on any lease by a tenant in fee &c., and which leases shall have been granted after the passing of this act," applies to the rents in question in this case, and they "shall be ap-

portioned so and in such manner, &c." But the next clause or division, and all rents charge and other rents, annuities, pensions &c., is qualified by the words "made payable on coming due at fixed periods under any instrument that shall be executed after the passing of this act," for rents charge, annuities &c., being things lying in grant, require an instrument in writing to make or pass them. The word "lease" in the first division of the section does not refer to the words "instrument in writing" in the second division. They mean different things: the legislature would otherwise be guilty of tautology.

Mr. Bethell for the heir-at-law.—By the common law there was no apportionment. The question is, whether the heir's common law right was taken away by the statute. He read the two first divisions of the section, and said the words "made payable on coming due at fixed periods under any instrument that shall be executed," referred to all the rents and other payments before enumerated, and no rents that were not reserved by an instrument executed, that is, by a written agreement, shall be apportioned. That was the true reading of the section. *Coltman*.

The Lord Chancellor, stopped Mr. Bethell, and having perused the act, observed, that "all rents service reserved on any lease," must be qualified by the words "any instrument that shall be executed after the passing of this act," which words refer to all the rents and other payments before enumerated. A lease, the first and most worthy of all, must be an instrument executed, that is, in writing, in order to make the rent reserved in it apportionable under the act.

Petition dismissed.—*In re Markby*, Sittings at Lincoln's Inn, August 10th, 1839.

### Queen's Bench.

[Before the Four Judges.]

#### PRACTICE.—ATTACHMENT FOR CONTEMPT.—COSTS.

*A person served with a subpoena duces tecum has no right to exercise his judgment on the question whether the documents required to be produced are admissible in evidence or not.*

*The Court will not make a rule for an attachment against a witness for not obeying a subpoena duces tecum absolute in a case where no intended contempt of the Court is shewn, and where the party applying for the attachment cannot shew that he has suffered injury from the non-production of the documents.*

*But in such a case, though the rule for attachment may be discharged, it will be discharged without costs.*

The Attorney General shewed cause against a rule for an attachment which had been applied for against the defendant, on the ground that he had not produced in a cause of *O'Malley Irwin v. The Marquis of Normanby*, pur-

<sup>a</sup> Shep. Touch. 266 & 267.

suant to the directions of a *subpœna duces tecum*, certain papers stated to be in his office. The affidavits in support of the application set forth that on the 2d of December, 1834, one Robert Johnston wrote a letter concerning Irwin to the then chief Secretary for Ireland, and that Irwin believed such letter to be in the Home Office in this country. This was the first of the documents which the defendant had been required to produce. Another was an address from Irwin to the Queen, a petition to her Majesty, and extracts from an affidavit used on an indictment for perjury in Ireland. The answer to this application was, that the documents thus required to be produced, were in law utterly inadmissible in evidence in the cause in which the present defendant had been required to produce them. It was also sworn that some of the papers required were not, and never had been, under the controul of this defendant, or deposited in the office of which he was at the head. Some of them had been deposited in the office of the Treasury, and were in Court in the possession of another witness, who was not, however, called on to produce them.

Mr. O. M. Irwin in person addressed the Court in support of the rule.

Lord Denman, C. J.—These documents were inadmissible in evidence, in the cause in which the *subpœna duces tecum* was issued. Mr. Irwin therefore, did not suffer from their non-production. The rule must consequently be discharged, but not with costs; for though the defendant has not been guilty of such misconduct as to subject himself to an attachment, still a person subpœned as a witness has no right to exercise his discretion in deciding whether documents which he is commanded to produce are admissible in evidence or not. He ought to bring them to Court, and if he objects to produce them, ought to submit his objections to the Judge.

Mr. Justice Littledale concurred.

Mr. Justice Patteson.—It is not of course that an attachment should issue against a witness for not appearing at a trial. Unless it is made out that he was clearly in contempt, the attachment will not go. There is no proof that such was the fact here. It is one thing not to obey a writ of the Court, and another to be guilty of a contempt of Court in not obeying it. It is certainly the duty of a witness to attend with the required documents, if they are in his possession; and it is for the Court to judge whether such documents shall be produced. In the first instance, the person served with the *subpœna* must obey the writ; but still, if it be shewn, as it is here, that the party applying for the attachment has not sustained any injury whatever from the non-production of the documents by the witness against whom the attachment is moved, the attachment will not issue.

Mr. Justice Williams concurred.

Rule discharged, but without costs.—*The Queen v. Lord John Russell*, T. T. 1839. Q. B. F. J.

#### BILLS OF EXCHANGE.—INSOLVENT.—NOTICE.

*In an action on bills or notes, where a defendant sets up his discharge under the Insolvent Act, and the question turns on the sufficiency of the notice given to the creditor, the jury must have their attention directed not only to the 40th section of the 7 G. 4, c. 57, (the Insolvent Debtors' Act), which prescribes the sort of notice to be given to the creditor, but also to the 63d section of that statute, which declares that the prisoner shall have the benefit of the statute unless in his description he has been guilty of "any culpable negligence, fraud, or evil intention."*

This was an action upon two promissory notes. The notes were made payable to J. A. Frampton, Esq., and were drawn on the 20th of April, 1832, payable twelve and fifteen months after date, for the several sums of 30*l.* and 65*l.*, with interest. The defendant set up, at the trial before Lord Denman, at Westminster, in answer to the action, the fact that he had been declared an insolvent debtor, and had given the plaintiff notice of his taking the benefit of the act. It appeared that the notice contained in the schedule was in the following terms:—Messrs. Frampton and Co., of New Inn, London, attorneys at law, 108*l.* 14*s.* 6*d.* (1832), disputed, not having received the value thereof." It was stated that there was no debt due from the defendant to the firm, nor had there been any transactions between them. There was no proof given that any notice had in fact reached the hands of the plaintiff, though a notice, founded on this description in the schedule, had been sent to Messrs. Frampton & Co. It was therefore contended, on the part of the plaintiff, that the description of the notes not being given in the schedule, and the notice not having been addressed to the real creditor, but to a firm to which the defendant was not at all indebted, the plaintiff, though happening to be a member of that firm, could not be considered barred from maintaining his action for his private debt by such inaccurate notice. The learned Judge left the case to the jury on the 40th section of the 7 G. 4, c. 57,<sup>a</sup> desiring the jury to say whether, in fact, the description was not sufficient. The jury answered that question in the negative, and returned a verdict for the plaintiff. A rule had since been obtained to set aside that verdict, and have a new trial, on the ground of misdirection.

Mr. Erle and Mr. Henderson shewed cause. The question was properly left to the jury. There was nothing in the schedule to satisfy the terms of the 40th section of the statute, or to secure to the real creditor a notice that his debtor was about to take the benefit of the

<sup>a</sup> By which it is enacted, "that every prisoner who shall apply for relief under this act, shall, &c. deliver a full and true description of all debts due or growing due from such prisoner at the time of filing such petition, and of all and every person to whom such prisoner shall be indebted, together with the nature and amount of such debts respectively."

Insolvent Act. [Mr. Justice Littledale.—Would not the words "not having received the value thereof," inform the party to whom the notice was sent, that the debt was in respect of bills or notes?] It might awaken the suspicions of an astute mind, but not those of an ordinary person. But even then there was no such description of the notes as to lead the plaintiff to identify the debt as one which was owing to him personally. The notes were not set forth, though the statute requires "a full and true description of all debts, with the nature of the debt and the amount." The case of *Nias v. Nicholson*,<sup>b</sup> was adverted to at the trial; and the question was left to the jury on the authority of that case, and of *Forman v. Drew*,<sup>c</sup> and *Wood v. Jowett*.<sup>d</sup> All these cases shew that the question of sufficiency of description is a question for the jury, and here it was left to them, and they have properly decided it.

Mr. Kelly in support of the motion.—The real question here is, whether the statement of the debt in the schedule is intended to deceive the creditor, or is calculated to do so. That may be a question for the jury, but it is one which they must answer with reference to the provisions of the statute. As to the facts of the case, it is clear that Mr. Frampton knew that he was a creditor of Champney's; as the notice was sent to the firm of which he was a member, he must be taken to have received it. Was it possible then, for him to be deceived by its terms? The date of 1832 was given, and he must have known that he held notes of the defendant's made in that year, and remaining unpaid, and the principal sum due on those notes, and interest, made up the sum of 108*l.* 14*s.* 6*d.* There was amply sufficient matter in the notice to have awakened his attention, but at all events, the jury in considering the question of the sufficiency of the notice, ought to have had their attention directed to the 63rd section of the statute. By that section it is declared that "whereas it may sometimes happen that a debt of, or claim upon, or balance due from such prisoner as aforesaid, may be specified in his schedule so sworn to as aforesaid, at an amount which is not exactly the actual amount thereof, without any culpable negligence or fraud or evil intention on the part of such prisoner, be it enacted, that in such case, he shall be entitled to all and every benefit and protection of this act." The defendant did not receive the benefit of this section, which ought to have been brought to the consideration of the jury, who ought to have been called on to say whether there had been "any culpable negligence, fraud, or evil intention" on the part of the defendant.

*Per Curiam*.—The attention of the jury ought to have been directed to the 63rd as well as to the 40th section, and they ought to have been called on to consider the case with reference to the question of culpable negligence or fraud.

Rule absolute.—*Frampton v. Champneys*, T. T. 1839. Q. B. F. J.

<sup>b</sup> 2 Car. & P. 120; 1 Ry. & Moo. 322.

<sup>c</sup> 4 Barn. & Crea. 15.

<sup>d</sup> *Id.* 20, n.

### Queen's Bench Practice Court.

#### SUING IN FORMA PAUPERIS.—COUNSEL'S CERTIFICATE.

*When a plaintiff desires to be admitted to sue in forma pauperis, and by prochein amy, the two objects may be gained by one motion.*

*Counsel's certificate of a pauper plaintiff having a good cause of action is intended for the information of the Court, and a rule admitting a plaintiff to sue as a pauper, need not be drawn up on reading such an instrument.*

Tindale moved for a rule to admit the plaintiff to sue in *forma pauperis*, and by *prochein amy*. It was submitted that the two objects might be gained by one application.

Williams, J., granted a rule.

On a subsequent day,

Channell obtained a rule for discharging that obtained by Tindale, on the ground that the plaintiff's good cause of action was not certified by counsel.

Tindale shewed cause, and contended that when counsel appeared in Court and stated that a good cause of action existed, no certificate was necessary. The certificate was only for the information of the Court, but when that information was given personally by counsel, that was sufficient. He had stated that there was a good cause of action when he moved, and in point of fact a certificate had been handed in, but returned by the officer of the Court, on the ground of its not being requisite.

Channell, *contra*, submitted that the practice was the same whether the certificate was granted in Court or at Chambers. The certificate ought to have been annexed to the affidavit of the plaintiff and his petition.

Coleridge, J.—There is no doubt that the certificate is a matter of importance; but it is not for the benefit of the defendant, but for the information of the Court. Here everything which is necessary has been done, except, as it is alleged, one thing, which is the drawing up of the rule on reading the certificate of counsel. I think, however, that the officer was right in not so drawing it up, as it is not annexed to the affidavit, or verified by it. At the same time, however, as the certificate is for the information of the Court, all has been done that is requisite. The rule must be discharged, but without costs.

Rule discharged.—*Bryant v. Wagner*, T. T. 1839. Q. B. P. C.

#### JUDGMENT AS IN CASE OF A NONSUIT.—PEREMPTORY UNDERTAKING.

*A plaintiff having given a peremptory undertaking to try at the first practicable sitting of the Sheriff's Court, and it appearing that the sheriff appointed Courts only on application for the trial of particular causes: Held, that it was the plaintiff's duty to take the proper means to procure the trial of the*

*cause, before the defendant procured judgment absolute.*

This was a rule for setting aside judgment as in case of a nonsuit. A rule for judgment as in case of a nonsuit having been formerly obtained, it was discharged on the 30th January, on the plaintiff giving a peremptory undertaking to try at the next practicable Court day, before the sheriff of Hereford. It was shewn by affidavits that the practice of the present sheriff was to appoint Court days for the trial of causes, on the application of the parties only, and not, as was the custom of previous sheriffs, to appoint certain general Court days. In obedience to the plaintiff's undertaking he applied to the sheriff to appoint a day for the trial, and on the 25th April the cause was tried in the absence of the defendant. The latter, however, in Easter Term, previous to the trial, obtained a rule absolute for judgment as in case of a nonsuit after a peremptory undertaking, which it was now sought to set aside, on the ground of irregularity.

*Butt and Chandless* shewed cause, and contended that if the plaintiff had thought fit to apply to the sheriff to appoint a day to try the cause, before the defendant had obtained the rule absolute for judgment, this motion might have been successful, but as he had not done so, the judgment which had been obtained was regular, and the rule must be discharged.

*R. V. Richards and Ogle, contra.*—The time of proceeding to trial was sufficiently early, because there had been no public Court day held, according to the old practice. It was the duty of the defendant, if he desired to force on the trial of the cause, to apply to the sheriff to appoint a public day.

*Coleridge, J.*—In this case we must see whether there is any irregularity. The plaintiff's undertaking was to try at the next practicable Court day before the sheriff, and he was bound to perform it. By the affidavits, however, it appears that he might have made application to the sheriff, and might have had the cause tried long since. The plaintiff was bound to know the practice of the Sheriff's Court, when he undertook to comply with it, and it was his duty, therefore, to get a day appointed for trying the cause.

Rule discharged.—*Sell v. Adams*, T. T. 1839. Q. B. P. C.

#### SUIT IN CONSISTORIAL COURT.—PROHIBITION.

*Where in a suit in the Consistorial Court for tithes the defendant pleaded a plea which raised a question beyond the jurisdiction of that Court, but afterwards waived it, the Court in that stage of the proceedings refused to grant a rule for a prohibition.*

*Erle* had obtained a rule for issuing a writ of prohibition to the Consistorial Court of the diocese of Exeter. The suit was promoted for the recovery of great tithes, by the lessee of the titbing garb of the rectory of Salcombe Regis, against the defendant, a parishioner and inhabitant and occupier of titheable lands within that parish. The defendant pleaded in

bar to the libel, admitting the character of the plaintiff, and his own occupancy of the lands, but alleging that those lands were not within the bounds, limits, or titheable places to the rectory of the parish church of Salcombe Regis belonging, but now within the bounds &c. to the rectory of Sidbury belonging, and that the great tithes thereof were a portion of tithes within Salcombe Regis belonging to the rectory of Sidbury, and were of right and by lawful prescription payable to the latter. This plea was admitted, and the defendant assigned to prove it, but although various extensions of the time allowed had been made no proofs had been given, and it was understood that the plea had been abandoned. The defendant was then required to put in his personal answer, and he introduced it, but it was decreed to be insufficient, and he was required to answer further. At this state of the case, the present rule was obtained.

*Crowder* now shewed cause, and contended, that in order that such a motion should succeed, it was necessary that it should appear that the Ecclesiastical Court was proceeding to try matter over which it had no jurisdiction. In *Dutens v. Robson*, 1 Hy. Bl. 100, it was decided that where the subject of a suit in an inferior court was within the jurisdiction of that court, though in the proceedings a matter were stated which was out of its jurisdiction, yet, unless it was going to try that matter, a prohibition would not lie. In the present case, the subject matter of the suit was clearly within the jurisdiction of the Ecclesiastical Court; for the question of portion was abandoned. *Dike v. Browne*, 2 Ld. Raym. 835, was also in point. *French v. Trask*, 10 East, 349, was distinguishable from the present case, because, there a question upon a modus was to be tried in the inferior court, but here such was not the case, nor was there any question without the jurisdiction of the Spiritual Court raised below. The case of *Byerley v. Windus*, 5 B. & C. 1, was very important, for the opinion there expressed by Mr. Justice Bayley.

*Erle* in support of the rule.—Upon the face of the pleadings there was sufficient proof that the Ecclesiastical Court was about to try a matter of common law jurisdiction; for the only matter in dispute was the question of boundary. *Buggin v. Bennett*, 4 Burr. 20, 35, was in point. There Lord Mansfield said, "if it appears from the face of the proceedings that the court below has no jurisdiction, a prohibition may be issued at any time, either before or after sentence, because all is a nullity; it is *coram non jndice*." The application was not too early, because *French v. Trask* shewed that it was not necessary to wait until the Ecclesiastical Court actually proceeded to try a question not within its jurisdiction, before the prohibition issued, if it was clear that such a question only must be decided by the court.

*Cur. adv. vult.*

*Coleridge, J.*, subsequently delivered judgment. There can be no doubt that a question of portion is one which this Court will prohibit the Court Christian from trying; the reason

is given in an *Anonymous Case* in Godbolt, p. 45, for a portionist "claims by prescription and not merely as parson, or by reason of the parsonage, but by a collateral cause, namely, by prescription, which is a temporal cause," &c. If, therefore, the Court below be now proceeding to try this question, or if there can be nothing else to try, the writ ought to issue, and the only difficulty which I have had in deciding this point arises from the obscurity in which the affidavits and the argument equally left the state of the cause below. In the affidavit for the rule, nothing was stated but the libel and plea: the affidavit on the other side, however, made by the proctor for the promonent discloses that this plea was admitted, and that the defendant's proctor was assigned to prove it; that after several extensions, the term probatory expired without any proofs offered; that he then understood the plea to be abandoned, and called on the defendant for his personal answer: that the defendant introduced his personal answer accordingly, which had been objected to and decreed to be insufficient, and a further answer required. It is in this state of the pleadings that the writ is moved for, and in this state I think, upon the whole, it ought not to be issued. The Court below has jurisdiction over the original subject-matter of the suit, of all that appears on the face of the libel; the plea introduced new matter, which, if the defendant objected, the Court could not try, but the defendant then made no objection; he accepted time for the proof of his allegations, and finally, appears to have revived the plea. The cause now stands for his answer to the allegations in the libel. At present, therefore, the Court below is dealing with nothing beyond its jurisdiction. It has been often decided that it is not enough for matter beyond the jurisdiction to appear incidentally in the cause to warrant our prohibition to the Court below, unless it also appears that the Court are about to try or must try that matter. If by the course of the Court below, this question of portion may still be revived, and become the question in the cause, it will then be time enough for the defendant to apply to this Court for its restraining power. At present the application is either too late or too early, and the rule must be discharged. It is sworn that the proctors had agreed to abide, as they well might, by the sentence of the very intelligent judge below, and not to apply for any prohibition; but there has been no opportunity to answer or explain this allegation, and therefore I discharge the rule without costs.

Rule discharged.—*Cardew v. Colley*, T. T. 1839. Q. B. P. C.

#### LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

##### House of Lords.

To amend the Law relating to double and treble Costs. [For second reading.]

For authorizing actions relating to Joint Stock Banks. [For second reading.]

For regulating the Metropolitan Police Courts. [For third reading.]

##### Bills passed.

Reduction of Postage.  
Stannary Courts.  
Election Petitions.

##### Postponed.

Courts of Admiralty.

##### House of Commons.

To regulate and enlarge the Summary Jurisdiction of Justices. Lord John Russell.  
[In Committee.]

Small Debts Court Bills No. 2, for the following places:—Kingsbridge and Dodbrooke, Leeds, Liskeard, Liverpool, Newton Abbot, Tavistock, West Ham.

To alter and amend the Laws relating to Sewers. [In Committee.] Mr. Christopher.

For relieving Poor Persons from Rates. [For 2d reading.]

Holding Assize Courts. [In Committee.]  
Trial of Prisoners at Quarter Sessions. [In Committee.]

Administration of Justice in parts of Counties. [In Committee.]

For the better regulation of Irish Attorney's and Solicitors. Mr. O'Connell.

For incorporating the King's Inn, Dublin, and regulating the Profession of the Law in Ireland. Mr. O'Connell.

##### Bills passed.

Tithes Commutation.  
Joint Stock Banks.  
Patents for Inventions.  
Real Estates Liability.

#### THE EDITOR'S LETTER BOX.

The Letter of "A Country Solicitor," on granting legal distinctions at the examination, will probably appear next week.

The statement in favour of certain printed forms of writs, is not admissible in its present shape.

W. B. J.'s communication shall be noticed at an early opportunity.

The case on the Apportionment Act will be found at p. 299, *ante*.

The reduction of Postage Bill (notwithstanding some doubts thrown upon it), having passed both Houses, we presume will soon receive the Royal Assent. It will of course be acted upon as soon as practicable. Such of our country readers as desire it, shall have the benefit of the measure the moment it comes into operation, by the immediate transmission of the *Legal Observer*, now sent by the booksellers' parcels.

# The Legal Observer.

SATURDAY, AUGUST 24, 1839.

— " Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## THE RESULTS OF THE SESSION.

In the course of the last ten months, we have laboured unceasingly to call the attention, not only of the profession and the public, but the proper authorities in the state, to certain matters which urgently demanded legislative interference; and as the session is now drawing to a close, we shall shortly inquire what has been done with respect to them.

First and foremost stand the arrears in equity, and we deeply regret to think that these remain as they were, or rather in a worse state, if possible. The Courts of Equity have now again closed, but whether they be open or shut is of little consequence to the great body of the suitors: they are equally denied a hearing. As a machinery for managing property with advantage to persons under disabilities,—as a tribunal for adjudicating upon matters in which all parties are desirous of obtaining the opinion of the Court, and are willing, therefore, to bring matters to a hearing in the shape of *short causes and consent causes*,—as a source of profit to the profession of the law,—the Courts of Equity fulfil the design of their institution, but for all other purposes they are now almost useless. The fraudulent possessor of property, the unfaithful guardian or trustee;—whoever is purposed to avail himself of the practice and forms of the Court, and to delay a hearing of a cause, may defy its jurisdiction; he may deprive others of their rights; he may even preserve his own good name, at any rate for many years, and may thus drive his rightful opponent to abandon or compromise his just claims. This alas! is no exaggeration of the state to which the Court of Chancery is reduced. An evening's debate in the House of Lords, and a

statement of the case, twice interrupted, in the House of Commons, are all that the suitor has to console himself with in the shape of redress, or even consideration of his grievances. In the name of the profession and the public we do respectfully complain of this.

How then stand the other Courts? The Court of King's Bench is little better off than the Court of Chancery, while in the Court of Bankruptcy we have an instance of a completely opposite state of things. If the former Courts suffer from plethora, the latter labours under an atrophy; but we much fear this arises from a want of confidence in the tribunal, and we are glad to see that Mr. James Stewart has given a notice for the next session that he will call the attention of the House to the administration of the law in Bankruptcy, both in the metropolis and in the provinces. We trust that this may induce the government to take up the matter.

Another subject to which we have devoted considerable space, is the enfranchisement of Copyholds, and we have reason to hope that here some progress has been made. We are still of opinion, that unless the compulsory principle be introduced into the measure, it will be of little avail. We trust, therefore, that whenever the bill is re-introduced, it will contain clauses of this nature. It is understood that it will be originated in the House of Lords next session.

Another subject which we have brought under the notice of our readers, is the state of the Metropolitan Police Courts, and the various bills for their improvement, and these will, with the New Postage Act, in fact, form the principal, if not the only *acts* of the session. Two of them, the City of

London Police Bill, and the Metropolitan Police Bill, relate chiefly to the police force, but the Metropolitan Police Courts' Bill, will be of much practical interest to the profession. We gave it at considerable length\* when first printed, and we shall soon be able to lay it again before our readers as the law of the land.

The County Courts Bill, after having passed through a Select Committee, was abandoned for the session, but the principles being now well settled on which it is to be proceeded with, we suppose there can be little doubt of its passing next session.

Altogether, we cannot look upon the second session of the first Parliament of Queen Victoria with much satisfaction. The ministerial crisis, which happened in the midst of it, threw every thing into confusion, and the consequence has been that the real legislative business of the year has been done by about fifty members in the last month; this is made the ground, and we fear with too much reason, of throwing out most of the bills so passed in the Lords. We shall be able, probably in our next number, to give a complete account of the slaughter, but each night of the sittings has had of late its victim. Indeed, the Metropolitan Police Courts' Bill had a narrow escape, but we understand it has not been much altered. The Registry of Births Bill, however, has thus been lost, and numerous others, with which we have nothing to do. The progress indeed of late, of Lord Lyndhurst and Lord Brougham, reminds us of the feats described by Homer and Virgil of their heroes,—

"Ipse intus dextra et læva pro turribus adest,  
"Armatus ferro et cristis capita alta corusci."

## PRACTICAL POINTS OF GENERAL INTEREST.

### EVIDENCE ON BILLS OF EXCHANGE.

If a bill of exchange be drawn in favour of a fictitious payee, with the knowledge as well of the acceptor as the drawer, and the name of such payee be indorsed on it by the drawer with the knowledge of the acceptor, which fictitious indorsement purports to be the drawer himself or his order, and then the drawer indorses the bill to an innocent indorsee for a valuable consideration, and afterwards the bill is accepted, but it does not appear that there was an intent to defraud any particular

person, such innocent indorsee for a valuable consideration may recover against the acceptor as on a bill payable to bearer. Parol evidence was admitted to prove these facts, *Gibson v. Minch*, 1 H. B. 569. In *Rex v. Elliot*, 2 East P. C. 951; 1 Leach, C. L. 175, a forged bank note, although the word "pounds" was omitted in it, was held to be counterfeit, and evidence was admitted to show that the word "pounds" was omitted.

A bill of exchange was expressed in figures to be drawn for 245*l.*, in words, for two hundred pounds, value received, with a stamp applicable to the higher amount: It was held, that evidence to shew that the words, "*and forty-five*," had been omitted by mistake, was not admissible. *Tindal, C. J.*, said, "the only question in this case is, whether the evidence adduced on the trial of the cause was admissible or not; and, under the circumstances, I am of opinion, that it was not admissible. This is a case of *ambiguitas patens*, and, according to the rules of law, evidence to explain such an ambiguity is not admissible. Where there is doubt on the face of the instrument, the law admits no extrinsic evidence to explain it. Now, on the body of the bill in question, it appears to have been drawn for 200*l.*; but in the margin the figures express the sum of 245*l.* If this creates any ambiguity, it is one which arises on the face of the instrument. In most of the cases cited for the plaintiff the ambiguity arose from matters not appearing on the instrument. In *Gibson v. Minett*, 1 H. Bl. 509, parol evidence introduced the difficulty, not the language of the instrument; and parol evidence was admitted to remove it. So, in the instance of commercial instruments, the difficulty rarely appears upon the face of the instrument, but arises from the custom of the country or the usages of trade. In *Rex v. Elliott*, 2 East Pl. Cr. 951, the Court looked at the sum in the margin in order to shew the intention of the party in uttering the bill, but not to shew the meaning of the bill itself. The evidence in question not being admissible, we cannot shake the rule of commercial writers, that where a difference appears between the figures and the words of the bill, it is safer to attend to the words. If we take the authority of those writers where we have none of our own, this is a good bill for the sum expressed in the body; and therefore I am of opinion that the plaintiff is entitled to judgment for 200*l.* Judgment for 200*l.* *Sawderson v. Piper*, 5 Bing. N. C. 425.

\* 17 L. O. 355.

**CHANGES IN THE LAW**  
IN THE PRESENT SESSION OF PARLIAMENT.  
No. VIII.

—  
**METROPOLIS POLICE.**

2 & 3 Vict. c. 47.

*An act for further improving the Police in and near the Metropolis. [17th August 1839.]<sup>a</sup>*

10 G. 4, c. 44.— *So much of 29 G. 2, c. 25, as requires the appointment of constables at Courts Leet repealed.*—Whereas an act was passed in the tenth year of the reign of King George the Fourth, intituled “an Act for improving the police in and near the metropolis,” for the purpose of establishing a new and more efficient system of police in the room of the inadequate local establishments of nightly watch and nightly police, within the limits in the said act specified, therein called “the Metropolitan Police District:” and whereas the system of police established under the said act hath been found very efficient, and may be yet further improved: be it therefore enacted by the Queen’s most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that so much of an act passed in the twenty-ninth year of the reign of King George the second, intituled “an Act for appointing a sufficient number of constables for the service of the city and liberty of Westminster, and to compel proper persons to take upon them the office of jurymen, to prevent nuisances and other offences within the said city and liberty,” or of any other act, as requires or authorizes the appointment of any constables or high constable at any court leet, shall be repealed from the passing of this act.

2. *Parts of parishes may be added to the police district.*—And whereas by the said act of

<sup>a</sup> This act is intended further to improve the system of police in the metropolitan district, and to include therein, the parts of parishes in the district of the Central Criminal Court or within fifteen miles in a straight line from Charing Cross. From the passing of the act, all summons and warrants in criminal proceedings, are to be executed by the police constables and none other. The powers of the police are defined, in cases of suspected felony. The act also contains provisions relating to fairs, public houses, unlicensed theatres, places for fighting animals, gaming houses, pawnbrokers, driving stage coaches, &c. The various nuisances, which are prohibited in public thoroughfares are specified, and power given to award damages to the amount of 10*l.*, for offences against the act. Police constables may, without a warrant, apprehend disorderly persons, or persons committing an assault, and other persons in certain cases may also detain offenders, until they can be delivered into the custody of a police constable.

the tenth year of the reign of King George the Fourth her Majesty is empowered, by the advice of her privy council, to order that any parishes, townships, precincts, and places, whether parochial or extra-parochial, in the counties of Middlesex, Surrey, Hertford, Essex, and Kent, of which any part shall be situated within twelve miles of Charing Cross in the City of Westminster, shall be added to and form part of the Metropolitan Police District: and whereas the boundary of the district so formed is very irregular; be it enacted, that it shall be lawful for her Majesty, by the advice of her privy council, to order that any place which is part of the Central Criminal Court District, except the City of London and liberties thereof, and such places as are or may be included in any act already passed or to be passed in this session of parliament, intituled “An Act for regulating the police in the City of London,” and also that any part of any parish, township, precinct, or place which is not more than fifteen miles distant from Charing Cross in a straight line may be added to and form part of the Metropolitan Police District, although the whole of such parish, township, place, or precinct, may not be added thereunto; and all the provisions of this act, and of the said act as amended by this act, shall extend and apply to the parishes, townships, precincts, or places, or the parts thereof, so respectively added; and in case no separate rate shall be levied for the relief of the poor in any place or part so added, the police rate shall be assessed and levied therein in like manner as in extra-parochial places within the Metropolitan Police District in which no rate is levied for the relief of the poor.

3. *Parishes added to the district to be within 3 & 4 Will. 4, cap. 89.*—And be it enacted, that in every case in which after the passing of this act any parish, township, precinct, or place, or any part thereof, shall become part of the Metropolitan Police District, it shall be lawful for the Lord High Treasurer or three or more commissioners of her Majesty’s Treasury, by warrant under their hands and seals, to direct the issue, out of the consolidated fund of the United Kingdom of Great Britain and Ireland, of an additional yearly sum not greater in each case than the amount of two-pence in the pound upon the additional rental assessed to the Metropolitan Police by reason of such addition, free of all rates, taxes, and impositions, to be paid and applied in aid of the charge of maintaining the police of the metropolis, upon the same conditions, with respect to the district so added to the Metropolitan Police District, as the issue of a sum not exceeding sixty thousand pounds out of the said consolidated fund is authorized, with respect to the parishes and places already within the Metropolitan Police District, by an act passed in the fourth year of the reign of his late Majesty, intituled “an Act to authorize the issue of a sum of money out of the consolidated fund towards the support of the Metropolitan Police;” and every parish, township, precinct, or place, or any part thereof,



within the counties last aforesaid, which at any time shall be part of the Metropolitan Police District, shall be within all the provisions of the last recited act as amended by this act.

4. *Repeal of 6 & 7 W. 4, c. 50, with a certain limitation.*—And be it enacted, that an act passed in the seventh year of the reign of his late Majesty, intituled “an Act to authorize the placing of the horse patrol now acting under the authority of the chief magistrate of the public office in Bow Street under the authority of the justices appointed for the Metropolitan Police District,” is hereby repealed; but notwithstanding the repeal of the said act it shall be lawful for her Majesty to appoint the justices appointed and to be appointed under the said act of the tenth year of the reign of King George the Fourth to be the justices of the peace for the counties of Berkshire and Buckinghamshire, although they may not be qualified by estate; and the said justices shall be empowered to act as justices in the last mentioned counties as fully as in any other part of the Metropolitan Police District, and not further or otherwise, and shall be styled “The Commissioners of Police of the Metropolis.”

5. *Metropolitan Police Constables to act on the river Thames, &c.*—And be it enacted, that the constables belonging to the Metropolitan Police Force shall have all the powers and privileges of a constable in the counties of *Berkshire and Buckinghamshire*, and upon the river *Thames* within or adjoining to the several counties of *Middlesex, Surrey, Berkshire, Essex, and Kent*, and within or adjoining to the city of *London* and the liberties thereof, and in and on the several creeks, inlets and waters, docks, wharfs, quays, and landing places, thereto adjacent, and shall act therein and thereupon as fully as in any part of the Metropolitan Police District.

6. *Sum required to defray charges of Thames Police, Horse Patrol, &c.*—And be it enacted, that it shall be lawful for the Lord High Treasurer, or three or more commissioners of her Majesty's Treasury, by warrant under their hands and seals, to direct the issue out of the consolidated fund of Great Britain and Ireland to the receiver of the Metropolitan Police District of a yearly sum, not greater than twenty thousand pounds, free of all rates, taxes, and impositions, for defraying the increased charge of the establishment of the Metropolitan Police Force by reason of that force being required to perform the duties heretofore performed by the Horse Patrol and by the surveyors and constables of the Thames Police, and also the issue of such further sum as shall be needed for the payment of the superannuation allowances of such surveyors and constables as have been superannuated under the provisions of an act passed in the third year of the reign of King George the fourth, or any subsequent act for the more effectual administration of the office of a justice of the peace in and near the metropolis, or who may hereafter become entitled to superannuation allowances under the provisions of any such act.

7. *Constables may be sworn to act for the*

*palaces.*—And be it enacted, that it shall be lawful for the said commissioners to administer to any constable belonging to the Metropolitan Police Force an oath to execute the office of constable within the royal palaces of her majesty and ten miles thereof; and every constable who shall be so sworn shall have the powers and privileges of a constable within the said royal palaces and ten miles thereof.

8. *Additional constables may be appointed at the cost of individuals.*—And be it enacted, that it shall be lawful for the said commissioners of police, if they shall think fit, on the application of any person or persons showing the necessity thereof, to appoint and swear any additional number of constables to keep the peace at any place within the Metropolitan Police District, at the charge of the person or persons by whom the application shall be made, but subject to the orders of the said commissioners, and for such time as they shall think fit; and every such constable shall have all the powers, privileges, and duties of other constables belonging to the Metropolitan Police Force: Provided always, that it shall be lawful for the person or persons on whose application such appointment shall have been made, upon giving one calendar month's notice in writing to the commissioners, to require that the constables so appointed shall be discontinued, and thereupon the commissioners shall discontinue such additional constables; and all monies received on account of any such additional constables shall be paid to the Receiver of the Metropolitan Police, and shall be accounted for by him in like manner as other monies receivable by him.

9. *A statement of the number of persons belonging to the Police Force to be annually laid before parliament.*—And be it enacted, that, in addition to the returns relating to the Metropolitan Police which by former acts are required to be laid annually before parliament there shall also be laid annually before both Houses of Parliament together with such returns, a statement of the total number of persons belonging to the Metropolitan Police Force on the first day of January of the year in which each return is laid before parliament, distinguishing the number of persons in each class or rank of such force, with the salaries and allowances enjoyed by each class.

10. *Exemption from Turnpike Tolls.*—And be it enacted, that no toll shall be demanded or taken on any turnpike road or bridge for any horse or police van passing along such road or bridge in the service of the Metropolitan Police, provided that the rider of such horse or driver of such van shall have his dress and accoutrements according to the regulations of the Police Force at the time of claiming the exemption; and every person who shall fraudulently claim or take the exemption from toll herein contained, not being lawfully entitled thereunto, shall for every such offence be liable to a penalty not more than five pounds; and in all such cases the proof of exemption shall be upon the person claiming the same.

11. *Police constables to attend the magis-*

*trials.*—And be it enacted, that the said commissioners of police shall take care that a sufficient number of constables belonging to the Metropolitan Police Force shall be in attendance upon every magistrate sitting at any Police Court within the limits of the Metropolitan Police District, and at every other criminal court holden within the said district, for the purpose of executing such summonses and warrants as may be directed to them.

12. *Summonses and warrants in criminal proceedings to be executed by them.*—And be it enacted, that after the passing of this act all summonses and warrants to be issued in any criminal proceeding within the Metropolitan Police District, or by any magistrate within the said district, shall be served and executed by a constable of the Metropolitan Police Force, and by none other.

13. *How warrants issued to police constables may be executed.*—And be it enacted, that when any warrant shall be directed or delivered to any of the said constables, unless it be necessary for the due execution thereof that such warrant be executed without delay, the constable shall deliver the same to the superintendent or other his superior officer belonging to the Metropolitan Police Force, who shall appoint, by indorsement thereon, one or more constables to execute the same; and every constable whose name shall be so indorsed shall have the same powers, privileges, and protections for and in the execution of such warrant as if the same had been originally directed to him or them by name.

14. *Penalty on constables for neglect of duty.*—And be it enacted, that every constable who shall be guilty of any neglect or violation of duty in his office of constable shall be liable to a penalty not more than ten pounds, the amount of which penalty may be deducted from any salary then due to such offender, or, in the discretion of the magistrate, may be imprisoned, with or without hard labour, for any time not more than one calendar month.

15. *Constables not to resign without leave or notice.*—And be it enacted, that no constable belonging to the Metropolitan Police Force, shall be at liberty to resign his office, or to withdraw himself from the duties thereof, unless expressly allowed so to do, in writing, by the superintendent under whom he may be placed, or unless he shall give to such superintendent one calendar month's notice of his intention; and every constable who shall so resign or withdraw himself without such leave or notice shall be liable to forfeit all arrears of pay then due to him, or to a penalty not more than five pounds.

16. *Constables dismissed to deliver up accoutrements.*—And be it enacted, that every constable belonging to the Metropolitan Police Force who shall be dismissed from or shall cease to hold and exercise his office, and who shall not forthwith deliver over all the clothing, accoutrements, appointments, and other necessities which may have been supplied to him for the execution of his duty, to the superintendent, or to such person and at such time and

place as shall be directed by the said superintendent, shall be liable to imprisonment, with or without hard labour, for any time not exceeding one calendar month; and it shall be lawful for any justice of the peace to issue his warrant to search for and seize to the use of her Majesty all the clothing, accoutrements, appointments, and other necessities which shall not be so delivered over, wherever the same may be found.

17. *Penalty for unlawful possession of accoutrements, or for assuming the dress of constables.*—And be it enacted, that every person not being a constable of the Metropolitan Police Force, who shall have in his possession any article being part of the clothing, accoutrements, or appointments supplied to any such constable, and who shall not be able satisfactorily to account for his possession thereof, or who shall put on the dress or take the name, designation, or character of any person appointed as such constable, for the purpose of thereby obtaining admission into any house or other place, or of doing or procuring to be done any act which such person would not be entitled to do or procure to be done of his own authority, or for any other unlawful purpose, shall, in addition to any other punishment to which he may be liable for such offence, be liable to a penalty not more than ten pounds.

18. *Penalty for assaults on Metropolitan Police.*—And be it enacted, that every person who shall assault or resist any person belonging to the Metropolitan Police Force in the execution of his duty, or who shall aid or incite any person so to assault or resist, shall for every such offence be liable to a penalty not more than five pounds, or, in the discretion of the magistrate before whom he shall be convicted, may be imprisoned for any time not more than one calendar month.

19. *Employment in the police not to prevent receiving half pay.*—And be it enacted, that no office or employment in the Metropolitan Police Force shall prevent the holder thereof from receiving any half pay to which, if he did not hold such office or employment, he might be or become entitled.

20. *Increased salary to the Commissioners of Police.*—And be it enacted, that, instead of the salary heretofore payable to the said Commissioners of Police, it shall be lawful for her Majesty to direct that a salary not exceeding the rate of twelve hundred pounds by the year shall be paid quarterly to each of the said Commissioners out of the consolidated fund of the United Kingdom of Great Britain and Ireland.

21. *Commissioners, surgeon, receiver, and clerks to be within 4 & 5 W. 4, c. 24.*—And be it declared and enacted, that the said Commissioners of Police, and also the surgeon, receiver, and clerks employed in the Metropolitan Police Office, are within the provisions of an act passed in the fifth year of the reign of his late Majesty, intituled "An Act to alter, amend, and consolidate the Laws for regulating the Pensions, Compensations and Allowances to be made to Persons in respect of their

having held Civil Offices in his Majesty's Service;" and that the clerks and officers who were appointed to the said office in the year one thousand eight hundred and twenty-nine, shall be deemed to have been employed therein before the fourth day of August in that year.

22. *Superannuation fund to be provided for constables.*—And be it enacted, that there shall be deducted from the pay of every constable belonging to the Metropolitan Police Force a sum after such yearly rate as the Secretary of State shall direct, not being at a greater rate than two pounds ten shillings in a hundred pounds, which sum so deducted, and also the monies accruing from stoppages from any of the said constables during sickness, and fines imposed on any of the said constables for misconduct, and from any portion of the fines imposed by any magistrate upon drunken persons, or for assaults upon police constables, as shall be directed to be paid to the receiver for the benefit of this fund, and all monies arising from the sale of worn or cast clothing supplied for the use of the police, shall from time to time be invested in government stock by and in the name of the receiver, and the interest and dividends thereof, or so much of the same as shall not be required for the purposes hereinafter mentioned, shall be likewise invested in such stock, and accumulate so as to form a fund to be called "The Police Superannuation Fund," and shall be applied from time to time for payment of such superannuation or retiring allowances or gratuities as may be ordered by the Secretary of State at any time to any of the said constables as hereinafter provided.

23. *Rates of allowance from the said fund.*—And be it enacted, that it shall be lawful for the secretary of state to order that any of the said constables may be superannuated, and receive thereupon out of the police superannuation fund a yearly allowance, subject to the following conditions, and not exceeding the following proportions; that is say, if he shall have served with diligence and fidelity for fifteen years, and less than twenty years, an annual sum not more than half his pay; if for twenty years or upwards, an annual sum not more than two thirds of his pay; provided, that if he shall be under sixty years of age it shall not be lawful to grant any such allowance, unless upon the certificate of the said commissioners of police that he is incapable, from infirmity of mind or body, to discharge the duties of his office; provided also, that if any constable shall be disabled by any wound or injury received in the actual execution of the duty of his office, it shall be lawful to grant to him any allowance not more than the whole of his pay; but nothing herein contained shall be construed to entitle any constable absolutely to any superannuation allowance, or to prevent him from being dismissed without superannuation allowance.

24. *Repeal of 2 G. 3, c. 28.*—And whereas it is expedient to amend and simplify the laws now in force relating to depredations committed on the river Thames, and in the docks and creeks adjacent thereto; be it enacted, that from the passing of this act an act passed

in the second year of the reign of King George the third, intituled "An Act to prevent the committing of thefts and frauds by persons navigating bum boats and other boats upon the river Thames," shall be repealed.

25. *Certain boats subject to provisions of 7 & 8 G. 4, c. lxxv.*—And be it enacted, that from the first day of August in the year one thousand eight hundred and thirty-nine every person who shall use, work, or navigate any boat whatsoever upon the river Thames for the purpose of selling, disposing of, or exposing for sale to and amongst the seamen or other persons employed in and about any of the ships or vessels upon the said river, any liquors, slops, or other articles whatsoever, between London Bridge and Limehouse Hole, shall be deemed to keep such boat for gain, and shall be within all the provisions of an act passed in the eighth year of the reign of his Majesty King George the Fourth, intituled "An Act for the better regulation of the Watermen and Lightermen on the river Thames between Yantlet Creek and Windsor," concerning persons who keep within the limits of the said act, any boat to be let out for hire or gain.

26. *Persons receiving ship stores from seamen, &c.*—And be it enacted, that every person who within the Metropolitan Police District shall knowingly take in exchange from any seaman or other person, not being the owner or master of any vessel, any thing belonging to any vessel lying in the River Thames or in any of the docks or creeks adjacent thereto, or any part of the cargo of any such vessel, or any stores or articles in charge of the owner or master of any such vessel, shall be deemed guilty of a misdemeanor.

27. *Cutting Ropes, Cables, &c.*—And be it enacted, that every person who shall unlawfully cut, damage, or destroy any of the ropes, cables, cordage, tackle, headfasts, or other the furniture of or belonging to any ship, boat or vessel, lying in the river Thames or in any of the docks or creeks adjacent thereto, with intent to steal or otherwise unlawfully obtain the same or any part thereof, shall be deemed guilty of a misdemeanor.

28. *Wilfully letting fall articles into the Thames or into a boat, &c. with fraudulent intention.*—And be it enacted, that it shall be lawful for any constable to take into custody every person who, for the purpose of preventing the seizure or discovery of any materials, furniture, stores, or merchandise belonging to or having been part of the cargo of any ship, boat, or vessel lying in the river Thames or the docks or creeks adjacent thereto, or of any other articles unlawfully obtained from any such ship or vessel, shall wilfully let fall or throw into the river, or in any other manner convey away from any ship, boat, or vessel, wharf, quay or landing place, any such article, or who shall be accessory to any such offence, and also to seize and detain any boat in which such person shall be found or out of which any article shall be so let fall, thrown or conveyed away; and every such person shall be deemed guilty of a misdemeanor.

29. *Framing a false bill of parcels to escape detection.*—And be it enacted, that every person who, for the purpose of protecting or preventing any thing whatsoever from being seized within the Metropolitan Police District on suspicion of its being stolen or otherwise unlawfully obtained, or of preventing the same from being produced or made to serve as evidence concerning any felony or misdemeanor committed or supposed to be committed within the Metropolitan Police District, shall frame or cause to be framed any bill of parcels containing any false statement in regard to the name or abode of any alleged vendor, the quantity or quality of any such thing, the place whence or the conveyance by which the same was furnished, the price agreed upon or charged for the same, or any other particular, knowing such statement to be false, or who shall fraudulently produce such bill of parcels knowing the same to have been fraudulently framed, shall be deemed guilty of a misdemeanor.

30. *Possessing instruments for unlawfully procuring and carrying away wine, &c.*—And be it enacted, that every person who shall be found within the Metropolitan Police District in or upon any canal, dock, warehouse, wharf, quay, or bank, or on board any ship or vessel, having in his or her possession any tube or other instrument for the purpose of unlawfully obtaining any wine, spirits, or other liquors, or having in his or her possession any skin, bladder or other material or utensil for the purpose of unlawfully secreting or carrying away any such wine, spirits, or other liquors, and any person who shall attempt unlawfully to obtain any such wine, spirits, or other liquors, shall be deemed guilty of a misdemeanor.

31. *Piercing casks, opening packages, &c.*—And be it enacted, that every person who shall, within the Metropolitan Police District, bore, pierce, break, cut open, or otherwise injure any cask, box, or package containing wine, spirits, or other liquors, on board any ship, boat or vessel, or in or upon any warehouse, wharf, quay, or bank, with intent feloniously to steal or otherwise unlawfully obtain any part of the contents thereof, or who shall unlawfully drink or wilfully spill or allow to run to waste any part of the contents thereof, shall be deemed guilty of a misdemeanor.

32. *Breaking packages with intent to spill contents.*—And be it enacted, that every person who shall, within the Metropolitan Police District, wilfully cause to be broken, pierced, started, cut, torn, or otherwise injured, any cask, chest, bag, or other package containing or prepared for containing any goods while on board of any barge, lighter, or other craft lying in the said river, or any dock, creek, quay, wharf, or landing place adjacent to the same, or in the way to or from any warehouse, with intent that the contents of such package or any part thereof may be spilled or dropped from such package, shall be deemed guilty of a misdemeanor.

33. *Superintendents and inspectors may board vessels.*—And be it enacted, that any superin-

tendent or inspector belonging to the Metropolitan Police Force shall have power, by virtue of his office, to enter at all times, with such constables as he shall think necessary, as well by night as by day, into and upon every ship, boat, or other vessel (not being then actually employed in her Majesty's service) lying in the said river or creeks, or in any dock or docks thereto adjacent, and into every part of every such vessel, for the purpose of inspecting and upon occasion directing the conduct of any constable who may be stationed on board of any such vessel, and of inspecting and observing the conduct of all other persons who shall be employed on board of any such vessel in or about the lading or unlading thereof, as the case may be, and for the purpose of taking all such measures as may be necessary for providing against fire and other accidents, and preserving peace and good order on board of any such vessel, and for the effectual prevention or detection of any felonies or misdemeanors.

34. *Superintendent, &c. having just cause to suspect felony, may enter on board vessels and take up suspected persons.*—And be it enacted, that it shall be lawful for every superintendent, inspector, or serjeant belonging to the Metropolitan Police Force, having just cause to suspect that any felony has been or is about to be committed in or on board of any ship, boat, or other vessel lying in the said river, docks, or creeks, to enter at all times, as well by night as by day, into and upon every such ship, boat, or other vessel, and therein to take all necessary measures for the effectual prevention or detection of all felonies which he has just cause to suspect to have been or to be about to be committed in or upon the said river, docks, or creeks, and to take into custody all persons suspected of being concerned in such felonies, and also to take charge of all property so suspected to be stolen.

35. *Unlawful quantities of gunpowder may be seized.*—And be it enacted, that it shall be lawful for every superintendent, or inspector, belonging to the Metropolitan Police Force, with such constables as he shall think necessary, at any time between sun-rising and sun-setting, to enter any ship, boat, or vessel (except her Majesty's ships) in the said river, docks, and creeks, and to search the same for unlawful quantities of gunpowder, and also to exercise the same powers of seizing, removing to proper places, and detaining all such unlawful quantities of gunpowder found on board any such ship, boat, or vessel, and the barrels or other packages in which such gunpowder shall be, as are given to persons searching for unlawful quantities of gunpowder under the warrant of a justice by virtue of an act passed in the twelfth year of the reign of King George the Third, intituled "An Act to regulate the making, keeping, and Carriage of Gunpowder within Great Britain, and to repeal the Laws heretofore made for any of those purposes."

[To be continued.]

## NEW BILLS IN PARLIAMENT.

## METROPOLIS SEWERS.

[Concluded from p. 295.]

## X. Rates :

1. Rates may be made by Court.
2. Certain rates to be allowed by landlords to tenants. This act not to make void agreements between landlord and tenant.
3. Lodgers to be deemed occupiers : landlords of houses let furnished to be assessed : lodgers may deduct rate from rent.
4. The Court may inspect rate books, and take copies or extracts.
5. How far value of property is to be ascertained.
6. Valuers to make oath.
7. Commissioners authorized to make a general rate for surface drainage and for other purposes. Provision respecting extra-parochial places.
8. Composition for parochial rates may be adopted by commissioners.
9. Power to compound for rates in certain cases.
10. Composition to continue so long as the Court think proper.
11. Persons receiving rents to be deemed owners.
12. Rates for ambassadors to be paid by the landlords.
13. Corporate companies to be chargeable to rates.
14. Public Buildings, &c. to be rated.
15. Notice to be given of making rates.
16. Rate book, how to be kept, and duplicate to be delivered to collector.
17. Persons rated may inspect rate books.
18. For correcting names in rates or assessments, &c.
19. The money collected to be paid to the treasurer, &c.
20. Rates to be recovered.
21. Distresses not to be deemed unlawful for want of form.
22. (*The city rates.*)—The money collected in city to be paid into the chamberlain's office.

## XI. Sewers.

1. Sewers and other works to be under the jurisdiction of the Court of Sewers.
2. Property in lands, sewers, works, goods, &c. vested in the Court. Punishment for injuring works, &c.
3. The Court authorized to view, maintain or alter sewers, &c. now made, or hereafter to be made.
4. The Court authorized to make new sewers and other works where none have heretofore been.
- Notice to be given to persons interested.
5. Power to break up the ground and pavements of the streets, &c. Notice to be given to surveyors of highways, &c. of the breaking up roads, pavements &c.

6. Court of Sewers empowered to alter the position of pipes, &c.

7. Roads and pavements to be reinstated by commissioners.

8. Commissioners authorized to deposit refuse of sewers, &c. on banks, and to remove or sell the same.

9. Occupier of certain lands through which sewers run may take away soil, &c. therefrom for his own use, on giving notice.

10. Upon neglect of occupiers to remove soil, &c. Court shall remove same.

11. Expenses of certain sewers, or a part thereof, to be paid by district benefited.

12. Expenses of certain sewers, or a part thereof, to be paid by property benefited.

13. When to the public advantage, Court may require owners, &c. of houses to drain the same.

14. Occupier may recover from owner expenses of making drainage to his house when ordered by Court, unless he be a tenant under a lease, whereof more than ten years are unexpired.

15. No sewer or drain to be made without the license of the Court.

16. Drains may be opened by the Court for inspection.

17. Persons altering any drain, &c.

18. Surveyors of Roads, &c. to construct drains, &c. according to order of Court.

19. Not to prevent surveyors of highways, paving boards, and other conservators of roads, making drains to convey surface water off the public roads.

20. Owners of drains, &c. to cleanse the same.

21. The Court may cleanse or deepen drains, &c. in case of neglect of the owners, &c. The costs and charges thereof to be paid by the owners.

22. No private drain to be used by others without the consent of the owner and of the Court.

23. Private drains not to be communicated with any sewer without leave of Court.

24. Any party feeling aggrieved in consequence of a want of cleansing of private drains, the court to order the cleansing thereof.

25. The builder to give notice to the Court previously to the commencement of any building, &c., in order that sufficient drainage may be afforded to any house, &c. Penalty for neglect.

Commissioners may exempt builders, &c. from making such drains.

26. The exhalation of effluvia from gully holes of sewers, when practicable to be prevented.

27. Mud, &c. not to be put over the gratings of sewers under a penalty.

28. (*The city sewers. St. Paul's.*)—This act not to extend to the drains belonging to St. Paul's Cathedral.

## XII. Contracts :

1. All work above 100*l.* to be performed by contract: No person to perform work ex-

ceeding 200*l.*, unless by contract, in any one year.

2. Fourteen days notice to be given of meetings to make contracts: the lowest tender not necessarily to be accepted.

3. All contracts to be entered in a book.

4. Surveyor to inspect work contracted for: commissioners may compound for breach of contract.

5. (*The City Contracts.*)—Persons not free of the city may be employed.

#### XIII. *Borrowing Money :*

1. Power to borrow money.

2. The Court of Sewers may grant securities to persons advancing money.

Form of security.

3. Securities may be transferred. Form of transfer. Transfers to be produced to clerk, and registered by him.

#### XIV. *Purchase of Land :*

1. The Court of Sewers authorised to contract for the purchase of lands, &c.

2. Form of conveyance to the Court.

3. Where persons shall neglect or refuse to treat, &c. Court of Sewers to issue their warrant to the sheriff to impanel a jury: jury may be challenged: witnesses may be summoned and examined upon oath: jury to assess damages: verdict of the jury to be binding.

4. Court may impose a fine on sheriff, witness, &c. making default.

5. Agreements to be filed with the clerk of the Court: Copies may be made.

6. By whom costs of jury and witnesses to be paid.

7. From what fund purchase and compensation monies are to be paid.

8. Application of compensation money amounting to or exceeding 200*l.*

9. Application of compensation money when less than 200*l.* and not more than 20*l.*

10. Application of compensation money when less than 20*l.*

11. Persons in possession to be deemed lawfully entitled to the premises, until the contrary be shewn to the Court of Exchequer.

12. If compensation money be refused, or titles not made, or if persons to whom money assessed cannot be found, money to be paid into the bank, subject to order of Court of Exchequer.

13. Court of Exchequer may direct payment of expenses in cases where purchases are made.

14. Vesting land in Court of Sewers, on payment of purchase money.

#### XV. *Sale of Land :*

1. Enabling Court to sell lands &c. not wanted.

2. Form of conveyance from Court.

#### XVI. *Miscellaneous Clauses :*

1. (*Obstructing duty.*)—Commissioners and agents not to be obstructed in their duty.

2. (*Evidence.*)—The Court, &c. may receive

evidence on oath: Punishment of persons guilty of perjury.

3. (*Evidence.*)—Persons attending as witnesses may be paid for loss of time.

4. (*Liability by Tenure.*)—Nothing herein to discharge persons from liability by tenure, &c.

5. (*Sewer Jury.*)—Commissioners may, whenever necessary, summon a jury to make presentment.

6. ——— A presentment of a jury not to be necessary upon each occasion to repair sewers, &c.

7. ——— Several defaults may be included in one presentment, but may be separately traversed.

8. (*Assessing costs.*)—Court may decree and assess costs.

9. (*Actions.*)—Actions may be brought for rates, fines, &c.

10. ——— Proceedings not to be void for want of form, or removable by certiorari.

11. ——— Commissioners may sue and be sued in the name of the clerk.

12. (*Limitation of actions.*)—No action to be brought after three months.

13. (*Liability of commissioners.*)—The commissioners, &c. exempted from pecuniary responsibility.

14. (*Appeal.*)—Persons aggrieved may appeal.

#### XVII. *Future Commissioners.*

1. Existing commissioners of sewers determined, and no commission of sewers, &c. hereafter to be issued.

2. One of her Majesty's Principal Secretaries of State may appoint or annul the appointment of any person.

3. Parishes within the district entitled to nominate commissioners as provided.

4. Mode of nomination.

5. Qualification of persons that may be nominated.

6. A poll may be demanded.

7. The polling.

8. In case of equality of votes.

9. Disputes how to be settled.

10. List of persons nominated to be sent to clerk of the Court.

11. And by such clerk to Secretary of State.

12. Commissioners from parishes to go out annually. Parishes to fill up vacancies only annually.

13. One-fourth part of certain commissioners of sewers to go out of office every year. Every commissioner eligible to be re-appointed.

14. The commissioners who go out shall be those who have given the least attendances.

15. (*The City Commissioners.*)—One-fourth part of the commissioners to go out of office every year.

15. ——— City commissioners to be elected by the common council.

#### SCHEDULE :

The City District. The Western District. The Finsbury District. The Tower Hamlets District. The Poplar District. The Southern District.

## LEGAL EXAMINATION DISTINCTIONS.

Sir,

I SHALL feel much obliged by your insertion of this somewhat long letter, that I may have the opportunity of making a few explanations, and of presenting a *definite plan* for granting legal distinctions. I have no intention of occupying your columns with a correspondence, which would be as unreasonable to you, as it would be irksome to myself; but satisfied with having recalled attention to the subject, I shall leave its further discussion to others. In the first place, and as exhibiting the tendency of the projected system, perhaps I may be allowed to make a few remarks on the letter of G. H. (p. 266, *ante*.) It appears to me that he has not yet obtained a clear conception of the subject, and that though he professes to answer, he can hardly have perused my letter. Still, to obviate future errors, I may as well set him right on one or two points. I may fairly say, that on the *principle* of the proposed addition to the present mode, I neither have had, nor shall have, any *real* opponents. All must see that the opposition proves too much, being equally levelled at the method which has by common consent proved beneficial to all other professions. There may be difficulties of routine, as must be expected everywhere; but general usage, an infallible guide, has sanctioned the principle beyond cavil or dispute; there will always, however, be a question, as to whether matters are ripe for such and such an alteration, although it is desirable in the main; and under this view, the subject of legal distinctions has been suffered to sleep for a season, without the smallest idea of its relinquishment, or the smallest doubt of its efficacy. The difference between myself and G. H. is this: I advocate some sort of distinction at the legal examinations, because I believe it would excite *students* to greater diligence, and by operating in a degree as a test of proficiency, would be of service to them in after life. Therefore, the plan would in my opinion be beneficial, both to the character and fortunes of the *profession*, of which such *students* are to form a part. My reasons are the natural effect of emulation, as proved by general experience, and its peculiar adaptation to the law, as a profession requiring all possible talent and industry. G. H., without opposing the method in general, does so in this particular, that it would lower the professional student, by encouraging *too exclusive an attention to law*. He therefore speaks of "*being degraded into mere lawyers*," and of "*attorneys degenerating* into men who have gained *great legal knowledge* to the neglect of those *important* qualifications which should be the *true distinction* of the profession." Now I submit, with deference, that the *true distinction* of a *lawyer* should be a knowledge of *law*. Of course, the student may hold these opinions or not as he pleases, but as some knowledge of law is now happily made essential, he must forbear *acting* upon them, lest

perchance he be relieved from the *degradation* of being made a lawyer at all! I should advise G. H. to look to this, for though to judge from his able letter, there is but small probability of his not passing, no one can answer for the result if he continues to look so meanly on the pursuit of law. I confess too, that I cannot comprehend how a person can *degenerate* into the possession of *great* legal knowledge. Under this view, a man may degenerate into a Judge, and sink below contempt because made Lord Chancellor. We must look down upon Nottingham, Eldon, and Lyndhurst, as failures, and consider that the law can only be *worthily* administered by him who knows the *least* about it. It certainly sounds *rather* paradoxical. But I believe Sir, you will agree with me that this is not the correct way of regarding the question. The great aim of the lawyer should be to attain a thorough acquaintance with law, and though he may *incidentally* diverge into other tracks, he must never forget that they are only bye-paths. And is this a trifling labour? Is that study in which the wisest men have grown old without exhausting it, to be indefinitely postponed, in comparison with lighter subjects? Law is proverbially a stern and jealous mistress, and has therefore many rivals; but if among her numerous throng there is one of a more specious address and a more inviting garb than another, it is that one yclept General Knowledge. Like an *ignis fatuus* she flits before the indolent and the vain, and like her empty prototype, has allured many an one to his ruin. Nor indeed, when we think of the smoothness of her path, compared with that of her rugged companion, can we wonder at her crowded train. Any one, with a diffusive mind and an ordinary stock of vanity, may make a display there; but how few possess the solid, sterling abilities necessary to shine here. Obstinate indeed as it may appear, I must, therefore, continue to insist, in opposition to G. H., that the *study of law* should be the *chief concern* of the *legal student*. Let no one, however, imagine that I would through life, prohibit the lawyer from the acquisition of all other knowledge than what his profession affords him. The desire of knowledge, and the habit of gratifying it once raised, is inextinguishable; and he may, when he has cultivated some portion of the field before him, employ his leisure in any direction whither his desires may lead; in which, instead of commencing with a mind emasculated and puffed up with general knowledge, he will pursue his subject with a vigor which wholesome discipline can alone impart.

G. H. complains that by this "*detestable plan*," as he calls it, young men can only obtain distinction by casting away the *rich stores* of wisdom and experience, to be replaced by a deep knowledge of the law, of no *use* to them, or *benefit* to their clients." But with the generality of law students, the choice is not between law and the rich stores he speaks of, but between law and *no store at all*; for probably few people will delude themselves with the idea that youths under articles trou-

ble themselves vastly about any thing ; because *there is no motive*—and as to the respective “*use and benefit*” which he alludes to, I respectfully insist that *cæteris paribus*, the man most skilful in law will be the most blessed with business.

G. H. adds that “as integrity, sound judgment, and scientific knowledge constitute the true distinction of a valuable attorney, *nothing short* of a classification, pointing out these, can prove beneficial.” Now, with every respect for these endowments, natural and acquired, I fear that a formal examination in integrity and sound judgment would be a somewhat difficult matter in these Courts *below*, and to throw in scientific knowledge as well, might prove inconvenient to the examiners as well as the examined ; but because a part is palpably impracticable, are we to lay aside the whole ? and because something is proposed to be attached to the plan, which is hardly to be thought of with seriousness, and has no necessary connection whatever with it, are we to rest satisfied that *nothing* should be attempted ?

Your correspondent suggests that our profession is by no means destitute of rewards, for if an attorney pant for distinction, he may go to the *bar*.—Undoubtedly, an attorney may go into the *navy*, if he likes, but promotion there would be a sorry proof of his distinction as a lawyer ; nor *as to the matter in hand*, is there any difference between the cases.

As to the *repetita crumbe* about being a hardship on those who gained no degree, they are as much entitled to an answer, as the oft-refuted argument against gratifying virtue by a reward. My only reply is, that the system prevails universally, both in the divine and human economy.

G. H. says that the rewards of the attorney should be earned in the *actual duties* of his profession, and that they consist of the esteem and confidence of his client : but why grudge *in addition* the cheering chance of honours on the threshold ? This is the method in the clerical and medical professions, in which honorary examinations long precede actual practice : and why refuse it to the law ? Besides, *are the solid rewards* he alludes to always bestowed entirely without caprice ? All that we know is, that they who get business, *do* get it, and this is all that G. H.’s suggestion comes to ; but the bare fact is scarcely a stimulus, when the chain which connects it with merit is concealed from our view. We may *hope* that it *may* be—but that is all.

I can perhaps scarcely close my remarks on G. H.’s reply in a better manner, than by returning his own version of a simile in my previous letter, as showing the difference between us. *He* would virtually prevent the growth of limbs beyond a given length, by making the *excess* useless. I am solicitous to follow nature, and while I am free from wishing to *stretch* the legs of any one, I am anxious if a man *does* possess a long understanding, to allow him a fair field for exercise.

I would wish now, with your permission,

briefly to allude to the letter of D. H. S. I can assure him I have considered all the correspondence he refers to. Speaking generally, it may be arranged under two heads—one comprising the opponents of all change whatever, not however openly fighting under that banner, but casting about for *prima facie* arguments to support their creed ;—the other, including the indolent or the obtuse, who are either beyond possibility of awaking, or wish to “slumber again.” The *exceptions* are those who, perhaps *slightly* indisposed to the plan, will still second it if proved beneficial ; and as seekers for truth, these are entitled to every respect. Still upon the *general principle*, there has been no real dispute, nor can there be. He asks for *facts*, let him consider these : the force of emulation, and the direction given to this principle by *all other* professions ; and then let him inquire what *special* reasons exist why there should be no application of it to the lower branch of the law. This, however disguised with argument or lost in words, is the gist of the question, and this is the basis of my former letter, though perhaps hid by an unnecessary superstructure. Still, the facts *are* facts, and not as G. H. styles them “*fallacies*.” In my opinion, too, it is better to have only *one* opportunity of obtaining honors. When all is placed on a single cast, it causes every effort, and is perhaps the true principle of competition. D. H. S. may not be aware, that University honors are independent of a *degree* :—*i. e.* a man may be senior wrangler, or a double first, and yet never be made a B.A. ; and that the honours of a medical man are also entirely unconnected with a degree ; and he will not say that they are of “no use” in after life. Indeed, looking at the natural effect of rewards as promoting diligence, and the means they afford as tests of merit, it seems most strange to doubt but that they *must* be of eminent use to the successful candidate, whatever station he may in future fill ; for whether or not he may *continue* his career, to them at least he is indebted for his stock *in hand*. I must also at all risks deny that the scheme is a “*radical*” one. It neither overthrows nor alters the present system, but merely proposes an addition which in no way interferes with the old plan.

I hope, Sir, that you will now suffer me to answer *your* requisition, and redeem my pledge, by stating the *nature* of the projected addition, and the *means* of carrying it into effect. I believe that under the present method the examination papers are distributed among the acting examiners in such a manner as that one division of the subject is committed to one gentleman only. He then considers the answers of each candidate, and decides accordingly, merely referring to his colleagues in cases of difficulty. Now I propose that this gentleman should, in addition, enter in a list the names of such *ten* of the candidates as have in his opinion shewn the greatest proficiency, placing them according to merit, and *numbering them* as in the Cambridge poll. Each Examiner doing the same, there will thus be separate lists of proficiency in the



separate subjects of the examination. Let these lists be then compared together, and a result obtained as to the *general merit* of each of such ten candidates, and let a *general paper* be made out accordingly, allotting priority on the same plan as in the other lists. Lastly, let the certificate of having passed contain a reference to this *last* list, supposing the candidate to be named in it; and then let *all* the lists be published by authority in the different law periodicals, and a leading London newspaper. By this method, which requires no new organization, and need cause no extra expense, all the candidates will be fairly treated. The idle, the careless, or the stupid, will be properly denied *that* which they have been either unable or have *taken no trouble* to obtain; while the painstaking will be gratified by a solace for his labours, and the talented will be stimulated to increased efforts. If a candidate feel unequal to compass *all* the branches into which the subject is divided, he may, by close attention to a part, meet with an agreeable notice in the inferior lists. If by capacity and exertion he has mastered the whole range, he will be *worthily* distinguished in the most honourable class. Each will thus secure success proportioned to his deserts; and all having an equal chance, no one can complain of failure.

As regards the *means* of effecting the plan, it seems to me that as to mere power, the examiners already possess it under the terms of their appointment. The order of Hilary Term, 1836, recites 2 G. 2, c. 23, whereby the judges are "authorized to *examine and inquire, by such ways and means as they should think proper, touching the fitness and capacity*" of persons to act as attorneys; and the order then states, that "to carry this statute *more fully into effect*," it was expedient to appoint Examiners. Examiners are accordingly appointed, and are declared "*competent to conduct*" the examination, "*subject to and in pursuance of the provisions of the rule.*" From this it appears that the judges have, under the statute, a discretionary power as to the method *best calculated* to procure fitness and capacity in the candidates; and the examiners being appointed to *relieve* the judges, and to carry the statute *more fully into effect*, have therefore delegated to *them* all the discretionary authority of the judges with reference to the end in view; viz. the improvement of the candidates, and, through them, of the profession. So that all that remains is for the *Examiners* to consider whether allowing legal distinctions would promote these objects. Far be it, however, from me to think of putting aside the *judges* by this arrangement. All must feel assured that those venerable persons would readily sanction any measure which tended to elevate even an *inferior* grade of the profession. But oppressed with their multifarious duties, all additions must be onerous, and I wish to shew how we may avoid troubling them on the subject. I am quite aware (and this is with me the weightiest objection), that the projected plan would materially augment *the labours*

of the *Examiners*, to whose services the profession is already *so deeply* indebted; and I admit how easy it is for me or any one else not directly concerned, to suggest a course for the guidance of *others*. Looking, however, at the spirit which has been of late evinced in the amelioration of our profession, and looking at the happy effect which the Incorporated Law Society is likely to produce, as a permanent body of high character, with the means and ability of rectifying abuses and *originating improvements*, we need not fear any obstacle *merely on this ground*; and from the known character of the *Examiners* we may feel convinced that let the projected addition once be allowed to conduce to the general welfare of their profession, and all *personal* motives to delay will be at once discarded.

You intimate that the proposition should be submitted to the *Examiners*, but as it is rather a matter for *them to originate* for the profession if they approve it, it does not appear that a better plan can be pursued for that purpose than by suggesting it to them through the medium of your valuable journal, and other leading legal periodicals. The main body of the profession are too much engaged in business to spend any very strenuous exertions on other matters, though for the sake of their sons they would *desire* its adoption, whilst a warm discussion by the younger members, unaided by a formal support, would end in no result except, perchance, prejudicing the subject.

I will now conclude this *very long* letter, which would not have been so far protracted, had not its author felt strongly on the subject. I am satisfied in having recalled attention to the matter, and shall not again trespass on your indulgence, unless unforeseen events occur. On the principle of the method advocated, there can be no dispute without overthrowing all our settled ideas of rewards and punishments. There may be difficulties of detail as may be expected, and in overcoming that innate torpor which more or less pervades all bodies; but as the principle is sound and generally admitted, ultimate success may be safely predicted of the plan: and I earnestly appeal to you, Sir, to assist its further progress. A subtle or a playful mind may of course envelope the subject in casuistry, or darken it with excess of light; but an opponent will do well to recollect that he exposes *himself* to an invidious imputation; for as opposition is naturally to be *most* expected from those, who, from personal indolence or incapacity, are led to *fear* the plan, he should reflect whether his own real motives or merits are such as to constitute him a probable exception in the eye of the *public*. But in spite of *all* his opposition the change *will* be made, and once established, its good effects will speak for themselves. In the meantime, I and my fellow-labourers must rest satisfied with having, though in a humble degree, forwarded and upheld its claims; and soliciting a general consideration of the subject by the *Examiners*,

the profession generally, and by the legal press in particular, we leave the matter, with confidence that its own intrinsic merits will eventually work out its success.

A COUNTRY SOLICITOR.

## SUPERIOR COURTS.

### Lord Chancellor's Court.

#### PATENT.—COSTS.—JURISDICTION.

*A petition to apply the great seal to a patent having been opposed unsuccessfully, and the patentee, after establishing his title, having asked for costs, the Lord Chancellor, first doubting his jurisdiction, after consideration, ordered the costs.*

This was a petition for the application of the great seal to a patent for securing to the petitioner the benefits of an invention for an improvement in the construction of strong chains. Other parties, manufacturers of strong chains, entered a *caveat* against the patent, and on reference to the Attorney General, they succeeded by their evidence to shew that there was neither novelty nor merit in the petitioner's proposed improvement, and they obtained his report to that effect. Upon this report, and on a supplementary petition by the claimant, the matter came to be discussed before the Lord Chancellor, by Mr. Wigram, Mr. Girdlestone, and Mr. Jenkins for the petitioner; and by the Solicitor General and Mr. Bacon for the parties opposing him.

Models of various forms of strong chains were produced in Court, and the merits of them were very fully discussed for parts of two days, after which the Lord Chancellor was fully satisfied as to the novelty and utility of the improvement suggested by the petitioner, and ordered the patent to be sealed accordingly, and to bear date the day on which it would have been sealed if no *caveat* had been entered.

The petitioner's counsel asked for his costs against the opposing parties, whose counsel opposed the application, and denied that the Lord Chancellor had jurisdiction to give costs. Even if he had such jurisdiction, they submitted that this was a case in which—after the Attorney General, the officer appointed to protect the Crown from imposition in these matters, acting upon information received from innocent parties in aid of that protection, made a report against the patent—his Lordship would not give costs against those parties, who only did their duty in protecting the Crown and the public. In effect the opposition was by the officers of the Crown.

The Lord Chancellor said he had no doubt of the propriety of giving the petitioner his costs, but he had some doubt as to his jurisdiction to give them.

His Lordship, on a subsequent day, said he found, after directing a search for authorities, that Lord Eldon did give costs to the petitioner against his unsuccessful opponents in a case like

this, and that was a good precedent to follow in this case. Costs were ordered accordingly.

*Ex parte Cutler.*—At Westminster, Easter Term, and Sittings at Lincoln's Inn, after Trinity Term, 1839.

### Vice Chancellor's Court.

#### PRACTICE.—DEFENDANT.—CONTEMPT.

*When a defendant, committed for contempt in not answering, has been found by the Master, on reference to him under the act 1 W. 4, c. 36, s. 15, to be too poor to employ counsel and solicitor to prepare answer, and declines to apply to the Court to assign them, it is competent to the plaintiff to make the application.*

Mr. Tupp applied on behalf of the plaintiff for an order to assign a solicitor and counsel to the defendant, a prisoner in contempt, to enable her to put in her answer to plaintiff's bill. The defendant had been brought up on a former day in the usual way, to answer her contempt for not putting in her answer, and the usual order of reference was then made to the Master, under the act 1 W. 4, c. 36, s. 15, to inquire whether the defendant was too poor to employ solicitor and counsel to prepare her answer. The Master reported that she had not means to employ a solicitor or counsel, and she did not think proper to apply for any to be assigned to her. Under these circumstances, it was competent for the Court to assign counsel and solicitor to her on the application of the plaintiff, notwithstanding the decision to the contrary in *Watkins v. Parker*.<sup>a</sup>

The Vice Chancellor was of opinion that it was competent for the plaintiff to make the application, and his Honour made the order accordingly, as asked.

*Wheeler v. Cotterell.*—Sittings at Lincoln's Inn, July 20th, 1839.

### Queen's Bench.

#### [Before the Four Judges.]

#### SLANDER.—CHURCHWARDEN, OUT OF OFFICE.

*In an action for slander the declaration alleged that the plaintiff, who had been churchwarden, was charged with having spent between 2 and 300l. of the parish money, no one knew how, for the parish books had been destroyed, and no vouchers had been produced; and that the defendant when making the charge asked whether such a person could be fit to be trusted with the parish money; and the innuendo was that the words imputed an indictable offence: Held, that the action was maintainable, though the words were uttered the day after the plaintiff quitted office, for that they did impute an indictable offence.*

This was an action of slander. The words were alleged to be spoken of the plaintiff as a churchwarden. They were in fact uttered the

<sup>a</sup> 1 Myl. & Cres. 370.

day after he had quitted office. The words charged that the plaintiff had spent between 2 and 300*l.* of the parish money, no one could tell how, for the parish books were destroyed, and no vouchers had been produced to shew how he had spent the money, and the defendant therefore asked whether Ramsey was a person fit to be trusted with the parish money. The declaration alleged the words to have been spoken of the plaintiff in his character of churchwarden, and averred that they imputed to him an indictable offence. The case was tried at the Spring Assizes in 1838, when the question left to the jury was, whether such a meaning as the declaration imputed was to be attached to the words, and the jury found in the affirmative, and gave a verdict for the plaintiff—Damages 40*s.* A rule was obtained in Easter Term, 1838, to set aside this verdict, and have a new trial.

Mr. Butt shewed cause against the rule.—The words here impute that the plaintiff while in office committed an indictable offence. That imputation affects his character after he has quitted office just as much as before. His right to vindicate himself and recover damages against his slanderer does not terminate with his holding of office. The words really affect the plaintiff's general character, and not merely his official character; for they not only impute to him misconduct while in office, but assert that he is not fit to be trusted in office again. This imputation is clearly slanderous. In *Walden v. Mitchell*, 2 Ventr. 265, the Chief Justice said that where a man had been in an office of trust, to say that he behaved himself corruptly in it, as it imported great slander, so it might prevent his coming into that or the like office again, and therefore was actionable. This plaintiff therefore had a clear right of action, and the question as to the meaning of the words having been properly left to the jury their verdict ought not to be disturbed.

Mr. Erle, in support of the rule.—These words are only actionable in respect of having been uttered of the plaintiff in his official character. But though they reflect on his official conduct, they were not uttered till he was out of office. If therefore they are only defamatory in respect of his office, he can maintain no action for the uttering of them after he has quitted office. In *Strode v. Horner*,<sup>a</sup> the words "thou art a cheating knave, and hast cheated the parish of 30*l.*," were held actionable, while the person of whom they were spoken was in office, and this was held for the sake of protecting the office he filled, which was one of trust and confidence. In *Hutton v. Beck*,<sup>b</sup> the words "thou hast beguiled and deceived the town in thy accounts of 4*l.*, and it is no marvel thou growest rich when thou deceivest the town," though spoken of a churchwarden, who is a sworn officer, were held not actionable, for it did not appear what they might mean. The general rule is laid down in Comyn's Digest,<sup>c</sup> where it is said that if a

charge be in respect of office, the party must shew that he has the office in respect of which the words were uttered, and generally that he was in office at the time of the words spoken; and *Tutill v. Milton*<sup>d</sup> expressly recognised that rule. There the words were spoken of a person who had been in trade, but had quitted it when the words were uttered; and that fact being stated as an objection to his right to recover, the argument in answer was that there was a difference between slander of one in respect of an office and in respect of a trade or profession; and the Court adopted the argument, admitting that in the former case the words must be shewn to have been spoken while the man was in office, while in the latter proof of a similar kind was not necessary. It is clear, therefore, that the right to maintain this action at all never existed, since the plaintiff was out of office when the words were uttered. They are not words which affect the general character of the plaintiff, and, at the utmost, they cannot be said to impute more than negligence in the disposal of the parish money.

Lord Denman, C. J.—It would be difficult to say that for slanderous words uttered the day before a man left office an action would be maintainable, but that none could be maintained for words uttered the day afterwards. There is a great contrariety of decisions on this point. It is not, however, necessary to settle the point now. For here is a statement that a man has spent a large sum of money belonging to the parish, no one knew how, because all the books were destroyed, and there were no vouchers. To my mind these words convey an imputation that the plaintiff had unlawfully, knowingly, and wickedly spent the money of the parish in an improper manner. The words are capable of the meaning which has been fixed on them by the *inuendo* in the declaration, and by the jury in the finding, namely, that they imputed an indictable offence. They are therefore actionable.

Mr. Justice Littledale concurred.

Mr. Justice Patterson.—If the words can fairly bear the meaning which has been given to them by the jury, which I think they may, this action is maintainable.

Mr. Justice Williams.—If the declaration had not contained this *inuendo* as to the meaning of the words, it might have been doubtful whether of themselves they could have been actionable; but if I am, as I am here, distinctly called on to say whether they charge the plaintiff with a neglect, or a corrupt application of the parish money, I must give them the latter meaning. I think that they mean that he put the money into his pocket from a corrupt motive. For such words the action is clearly maintainable, though they were uttered after the plaintiff was out of office.

Rule discharged.—*Ramsey v. Elmes*, T. T. 1839. Q. B. F. J.

<sup>d</sup> Yelv. 158.

<sup>a</sup> Styles, 338.

<sup>b</sup> Cro. Jac. 339.

<sup>c</sup> Defamation, G. 3.

## Queen's Bench Practice Court.

## INDICTMENT FOR NUISANCE.—PARTICULARS.

*Where, in an indictment for stopping up a river by throwing mud into its course, it appeared that the acts complained of were permanent, the Court refused to grant a rule for particulars of the dates of the acts complained of, but granted it only as to the act itself.*

*White* moved for a rule to shew cause why the prosecutor of this indictment should not give particulars of the nuisances of which he complained. It was an indictment preferred against the defendants for throwing mud into the course of the River Thames, with a view to the foundation of the embankment for the new Houses of Parliament, and the object of the present motion was to obtain a knowledge of the days upon which the acts were alleged to have been committed, as well as of the particular acts themselves. *Rex v. Curwood and others*, 3 Ad. & El. 815, was a case much stronger than the present.

*Coleridge, J.*—The days on which the acts were committed are immaterial. The prosecutor may not know them. The defendants may have particulars of the acts charged, but not of the days on which they were done. In *Rex v. Curwood* the nuisances were in various counties, and were not permanent. Here the acts complained of are permanent.

Rule accordingly.—*Regina v. Flower and others*, T. T. 1839. Q. B. P. C.

## DISCHARGE OF DEFENDANT UNDER SMALL DEBTS ACT.—NOTICE OF MOTION.

*In an action of ejectment, an application being made for the discharge of the defendant under the Small Debts Act, notice of the motion having been given to one of the two lessors of the plaintiff, and the other not being to be found, the Court granted a rule absolute in the first instance.*

*Dowling* moved to discharge the defendant out of custody under the 43 Geo. 3, c. 123, (the Small Debts Act); he was in custody for l.s. damages and costs in an action of ejectment. He cited *Doe d. — v. —*, 1 D. P. C. 69; *Doe d. Daffey v. Sinclair*, 5 D. P. C. 615; *Doe d. Trelford v. Ward*, 5 D. P. C. 290; and *Doe v. Reynolds*, 10 B. & C. 481. The rule must be absolute in the first instance. There were two demises stated in the declaration. One by Smith, the person really interested, and the other by an infant, the son and heir of the person by whom the property was sold to Smith. Notice of this application had been served on Smith, but the infant was not to be found. It was submitted that service on the latter would be useless, as he was not interested.

*Williams, J.*—The rule may be absolute.

Rule absolute.—*Doe d. Smith v. Payton*, T. T. 1839. Q. B. P. C.

## SERVICE IN EJECTMENT.

*Where, in an action of ejectment to recover possession of a Dissenting Chapel, service on the trustees and at the house was effected, it was held sufficient for a rule nisi for judgment against the casual ejector, and service of the rule on the trustees was held sufficient for a rule absolute.*

*Butt* moved to make a rule for judgment against the casual ejector absolute. The action was brought to recover possession of a Dissenting Chapel, and the rule nisi had been served upon the trustees. The original service of the declaration had been effected upon the trustees and also at the chapel.

*Coleridge, J.*—The rule may be made absolute.

Rule absolute.—*Doe d. Gray v. Roe*, T. T. 1839. Q. B. P. C.

## INSPECTION OF DOCUMENT.

*A document being identified by the defendant at a judge's chambers, but not annexed to the affidavit and filed with it, the plaintiff is entitled to inspect and copy it, even though it be sworn to furnish an answer to the action.*

*Humfrey* moved for a rule calling on the defendant to shew cause why the plaintiff should not be at liberty to take a copy of a certain paper writing in his possession. It was an action brought to recover the amount of an attorney's bill, and in order to get the bill taxed, the defendant went before a judge at chambers, and made an affidavit of the identity of a document, the effect of which was to shew that all claims of the plaintiff upon the defendant had been settled. It was not annexed to the affidavit, but was only exhibited to the deponent; but it was submitted that the plaintiff had as good a right to inspect or copy it as if it had been placed upon the files of the Court.

*Higgins* shewed cause in the first instance, and stated that the document was part of the evidence for the defence, and contended that the application could not therefore succeed. It could not be said that the plaintiff had any interest in the document, and *Smith v. Winter*, 6 D. P. C. 386, shewed that the Court would not interfere under such circumstances. *Jessel v. Millington*, 1 M. & Scott, 605, was also in point.

*Humphrey, contra.*—The document must be considered to be in Court, as it was removed for the convenience of the defendant only, and the plaintiff was entitled to inspect it. In the cases cited the document had never been brought into Court.

*Coleridge, J.*—This is a new case. The question is under what circumstances the defendant is possessed of the document? He brought it to the judge's chambers, and identified it. According to the old practice it would have been annexed to the affidavit and filed with it, and when filed either party might have

referred to it. For the convenience of the party, however, to whom the document belongs, he is now allowed to take it away, as he may want to use it for various purposes; but of course he takes it away clogged with all the conditions to which otherwise it would have been subject; and he must not therefore deny the opposite party the right which he would have possessed if it had remained at the judge's chambers, to inspect and copy it. The rule must therefore be absolute.

Rule absolute.—*Tebbutt v. Ambler*, T. T. 1839. Q. B. P. C.

### LIST OF LAW BILLS IN PARLIAMENT, WITH NOTES.

#### Royal Assents.

17 August 1839.

Election Petitions Trial.  
Postage Duties.  
Prisons.  
Stannary Courts.  
Custody of Infants.  
Imprisonment for Debt.  
Metropolis Police.  
Tithes Commutation.  
Sheriffs Exemption.  
Real Estate Liability.  
Highways.  
Turnpikes.  
London City Police.

#### Small Debt Courts for

Hatfield.	Wriksworth.
Belper.	Ecklington.
Newark.	Chesterfield.
Oldham.	Nottingham.
Bury.	

See p. 271, *ante*, for the List of seven other small debt court acts.

#### House of Lords.

To amend the Law relating to double and treble Costs. [For second reading.]

Administration of Justice in parts of Counties. [In Committee.]

#### Bills passed.

Joint Stock Banks.  
Poor Law Commission continuance.  
Metropolitan Police Courts.

#### House of Commons.

To regulate and enlarge the Summary Jurisdiction of Justices. Lord John Russell.  
[In Committee.]

Small Debts Court Bills No. 2, for the following places:—Kingsbridge and Dodbrooke, Leeds, Liskeard, Liverpool, Newton Abbot, Tavistock, West Ham.

To alter and amend the Laws relating to Sewers. [In Committee.] Mr. Christopher.

For relieving Poor Persons from Rates. [For 2d reading.]

For the better regulation of Irish Attorney's and Solicitors. Mr. O'Connell.

For incorporating the King's Inn, Dublin, and regulating the Profession of the Law in Ireland. Mr. O'Connell.

#### Bills passed.

Administration of Justice in Parts of Counties. Holding Assize Courts.

#### Postponed.

Trials of Prisoners.

### THE EDITOR'S LETTER BOX.

The several Acts relating to the Law which have recently passed shall be printed, with Notes, in the Legal Observer as early as practicable.

The further communications on Legal Examination Distinctions shall be attended to. The subject may be a good one for the Long Vacation; but we hope our correspondents will condense their arguments.

We referred in a late Number, p. 299, *ante*, regarding the necessity of *re-admission* where the party had never practised, to the case of *Ex parte Jones*, 2 Dowl. Pr. C. 451, and are reminded of the subsequent case of *Wilton v. Chambers*, 15 L. O. 123, and 1 Wil. Wol. and Dav. 701. We do not think that case directly overrules the other, for Mr. Wilton had actually practised and taken out his certificate after his first admission. Then the last case, *ex parte Marshall*, 6 Dowl. Pr. C. 526, is in accordance with *Ex parte Jones*.

The Letter on the Duties of Solicitors to their Articled Clerks, in answer to one which recently appeared, shall be inserted.

The grievance of the present system of Law Reporting, stated by "Digester," shall be noticed.

The observations of "an Old Solicitor" on Legal Discussion Societies will appear in an early number.

The communications of "A Subscriber," and W. B. J., are printed, but unavoidably deferred till our next.

# The Legal Observer.

SATURDAY, AUGUST 31, 1839.

— " Qued magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## STATE OF CRIME IN THE PROVINCES.

THE pressure of various matters of temporary interest has prevented our giving a further account of the Report of the Constabulary Police Commissioners, to which we adverted some time ago.\* The statements contained in it have lost none of their interest or importance by recent events; and we propose availing ourselves of its assistance to inquire into the state of crime in the provinces.

Some curious information is afforded as to country houses for the accommodation of migratory depredators and vagrants. "The trampers' lodging-house is distinct from the beer shop or the public-house, or any licensed place of public accommodation; it is not only the place of resort of the mendicant, but of the common thief—it is the "flash house" of the rural district; it is the receiving house for stolen goods; it is the most extensively established school for juvenile delinquency, and commonly at the same time the most infamous brothel in the district." Such houses are common in all towns of any consequence; they "are small, and yet as many as thirty travellers, or even thirty-five, have been found in one house; fifteen have been found sleeping in one room; three or four in a bed, men, women, and children promiscuously." The keeper of these houses furnish matches, songs, laces, and many other petty articles, which are hawked about as an excuse for vagrancy, thereby avoiding direct begging: and it gives them

an opportunity of going down areas under pretence of selling their wares, by which they have every chance of pilfering any article which may be inadvertently exposed." These houses offer a ready mode of disposing of all stolen property. A vagrant, aged 19, says, "I had no money when I was in Chester. I went into the market, got two dishes of butter, and some eggs. I then went to a lodging-house, and put the butter down, and asked if I could have a lodging. The woman said, 'Oh ay, I reckon thou hast been on the priggish order.' I said, What else? She bought the butter of me, and gave me about half price for it." Here also a change of dresses is kept, the better to screen the depredators from being detected. It is in these houses that servants often get corrupted.

"Those who engage servants," says a felon, "should be very particular with their characters, for often when a girl leaves her place, she goes to a lodging-house, and there gets acquainted with thieves. She pays a shilling at the Register Office, and gets a place, and is the tool of some person who has got connected with her; and very often these women go on the "servant's lurk," which is taking a place, and only waiting until they have an opportunity of committing a robbery, or of giving information to those who will." It is in these houses also that the various frauds practised by vagrants and beggars are planned and concealed.

"There are three lodgings [in Llanfyllin] for tramps, one of which is the most notorious house in the parish. The constables were frequently obliged to enter it, especially about fair times, in order to quell the disturbances and excesses created by trampers.

\* See *ante*, p. 81.

This disorderly house is kept by a woman known by the name of "Old Peggy." She never lets a tramp go to bed without money or money's worth, and the broken victuals a tramp brings home, is sold by her to poor persons who keep dogs, such as rat catchers, &c. One man told Mr. D——, a druggist in the town, that for two-pence "Old Peggy" would give him scraps enough to keep his dog for a week or more. This druggist stated that "Old Peggy" has often come to him saying "God bless you, doctor, sell me a hap'orth of tar." When she first applied, he asked, "What do you want with tar?" The reply was, "to make a *land sailor*. I want a hap'orth just to daub a chap's canvass trowsers with, and that's how I make a *land sailor*, doctor."

The Report next treats of the state of the rural districts in respect to crime committed by resident delinquents, and we are happy to say that the commissioners think that crimes of violence, whether originating in rapacity, or resorted to for the gratification of any vindictive or gross passion other than for money, are generally in a course of gradual diminution; but they also think, that crimes which are characterised by fraud, have increased perhaps in a greater proportion. Murder, however, frequently escapes punishment in the country from the inefficiency of the police. "Three cases of unpunished murder were presented to the notice of one of the commissioners upon his fortuitous and comparatively narrow path of investigation, during one fortnight, in the counties of Lancaster and Cheshire. In one of those cases the murderer escaped, it is supposed, in consequence of the guilty neglect of the constable, who was his relation." Attacks upon property are also frequently unchecked, and the illustration given of this, is too remarkable not to extract.

"Lieut. Cole, an officer of the royal navy, had purchased the freehold of some land near Rhayaden in Radnorshire. Some of this land had been inclosed by the person of whom he had purchased. It appeared that Lieut. Cole had a clear title to the land: however, had his title been defective it did not extenuate the use of illegal violence, which might equally be exercised for the infraction of a legal right. A neighbouring proprietor, who was also an attorney, and from family connexions a person of some influence, asserted that the land attached to the house was common, and determined to dispossess him. Lieut. Cole offered to meet any claim in a court of law, but this was refused, and possession was taken of the land by several men, armed with bludgeons,

who broke open his gates and turned their horses and cattle into his standing grass."

No constables could be found who would act in this or similar cases. "The poor (says Lieutenant Coke) bend instead of opposing."

The Commissioners next proceed to inquire into the state of the protection of travellers on the highways.—"We find no traces of mounted highway robbers amongst the class of habitual depredators, and could find no recent case of the robbery of mails, or of travellers in stage coaches, by robbers of that description." But footpad robberies, the robberies of single passengers committed with violence, are still so far frequent as to render travelling at night in many districts extremely insecure. This is evidenced by several commercial travellers, who all agree that it is unsafe to travel by night. "I cannot give a better conception (says one) of the state of insecurity than by the fact that the farmers in the neighbourhood of Leeds frequently waited for each other's company to return home after the market. I have dined at the market tables at Pontefract, Howden, Selby, &c., and have observed a wish on the part of the farmers, especially after dark, to get company to go home with, and several times have they availed themselves of my lamps, more particularly when they have received payments for their corn or wheat sold. I have seen the same at other places. I have known commercial men to travel on horseback as a more secure mode than travelling in a gig, and have adopted this mode myself." It would seem indeed, from the evidence of another witness, that the vicinity of some of the larger provincial towns is not even safe in the day time.

"They [strangers] robbed a young couple who were just going to be married, people in very respectable stations in life; they stripped them and robbed them; they were taking a walk about 12 or 1 o'clock in the day, in the neighbourhood of Thetford; they were stripped and robbed of every thing they had. I do not know that they were ill-treated: pistols were presented to them, and singularly enough they were not convicted of the robbery, in consequence of the parties refusing to take an oath; but they were convicted afterwards for stealing the pistols, and were transported for that offence."

We shall shortly return to some other points connected with this subject.

# PRACTICAL POINTS OF GENERAL INTEREST.

## PROOF OF DEBT.

By the 6 G. 4, c. 16, s. 52, it is enacted that any person who at the issuing of the commission shall be a surety, or liable for any debt of the bankrupt, if he shall have paid the debt, or any part thereof in discharge of the whole debt (although he may have paid the same after the commission issued), if the creditor shall have proved his debt under the commission, shall be entitled to stand in the place of such creditor, as to the dividends and all other rights under the said commission, which such creditor possessed or would be entitled to in respect of such proof. But this clause will not prejudice the creditor in any way.

Thus a petition was presented by a creditor, for an order on the assignees to pay him the amount of a dividend on a proof for 520*l*. Mr. Teed opposed the petition, on the ground that the creditor had already received from a surety a portion of the debt, amounting to 300*l*., and that the creditor was therefore only entitled to receive dividends on the remainder of the debt. By the statute 6 G. 4, c. 16, s. 52, the surety has a right to stand in the place of the creditor, whether he pays part or the whole of the debt; and therefore, if the petitioner is to be permitted to receive dividends on the whole amount of the debt, the bankrupt's estate will in that case have to pay a dividend twice over on the 300*l*. Sir John Cross.—The proof in this case having been made before the payment of the 300*l*. by the surety, it does not appear to me that the creditor surrendered his right to receive dividends on the whole amount of his proof, because he received a portion of the debt from the surety. Sir George Rose.—It seems to me very reasonable that the creditor should receive dividends upon the whole amount of his proof, provided he does not altogether receive more than 20*s*. in the pound. The surety has no *locus standi* under the act of parliament, either on legal or equitable grounds; for there is here no evidence of any payment of the entirety of the debt, or of any partial payment in discharge of the entirety. Ordered as prayed, but without costs. *Ex parte Coplestone, in re Snell*, 3 Dea. 546.

# CHANGES IN THE LAW IN THE LATE SESSION OF PARLIAMENT. No. VIII.

## METROPOLIS POLICE.

2 & 3 Vict. c. 47.

[Concluded from p. 311.]

36. *Penalty for having on board guns loaded with ball, or discharging guns in the night.*—And be it enacted, that every master or commander or other officer of any ship, boat, or vessel (except her Majesty's ships) who, while such ship or vessel shall lie or be in the river Thames between Westminster Bridge and Blackwall, keep any gun on board such ship, boat, or vessel shotted or loaded with ball, or cause or permit to be fired any gun on board such ship, boat, or vessel before sun-rising or after sun-setting, shall be liable for every gun so kept shotted or loaded to a penalty of five shillings, and for every gun so fired shall be liable to a penalty of ten shillings.

37. *Penalty for heating combustible matters on board of vessels.*—And be it enacted, that every master or commander or other officer of any such ship, boat, or vessel, or any other person on board of the same, who, while such ship, boat, or vessel shall lie in the said river between Westminster Bridge and Blackwall, shall heat or melt, or cause or permit to be heated or melted, on board such ship, boat or vessel, any pitch, tar, rosin, grease, tallow, oil, or other combustible matter, shall for every such offence be liable to a penalty not more than five pounds.

38. *Penalty on keeping fairs open within forbidden hours.*—And be it enacted that the business and amusements of all fairs holden within the Metropolitan Police District shall cease at the hour of eleven in the evening, and shall not begin earlier than the hour of six in the morning; and that if any house, room, booth, standing, tent, caravan, waggon, or other place shall, during the continuance of any such fair, be open within the hours of eleven in the evening and six in the morning, for any purpose of business or amusement, in the place where such fair shall be holden, it shall be lawful for any constable to take into custody the person having the care or management thereof, and also every person being therein who shall not quit the same forthwith upon being bidden by such constable so to do; and the person so then having the care or management of any such house, room, booth, standing, tent, caravan, waggon, or other place shall be liable to a penalty not more than five pounds; and every person convicted of having been therein, and of not having quitted the same forthwith upon being bidden by a constable so to do, shall be liable to a penalty not more than forty shillings.

39. *Fairs within the Metropolitan Police District may be inquired into. If declared unlawful, booths, &c. to be removed.*—And be it



enacted, that if it shall appear to the Commissioners of Police that any fair usually holden within the Metropolitan Police District has been holden without lawful authority, or that any fair lawfully holden within the said district has been usually holden for a longer period than is so warranted, it shall be competent to such commissioners to direct one of the superintendents belonging to the Metropolitan Police Force to summon the owner or occupier of the ground upon which such fair is usually holden to appear before a magistrate at a time and place to be specified in the summons, not less than eight days after the service of the summons, to show his right and title to hold such fair, or to hold such fair beyond a given period (as the case may be); and if such owner or occupier shall not attend in pursuance of such summons, or shall not show to the magistrate who shall hear the case sufficient cause to believe that such fair has been lawfully holden for the whole period during which the same has been usually holden, the magistrate shall declare in writing such fair to be unlawful, either altogether or beyond a stated period (as the case may be); and the commissioners shall give notice of such declaration by causing copies thereof to be affixed on the parish church and on other public places in and near the ground where such fair has been usually holden; and if, after such notices have been affixed for the space of six days, any attempt shall be made to hold such fair if it shall be declared altogether unlawful, or to hold it beyond the prescribed period if it shall be declared unlawful beyond a certain period, the Commissioners of Police may direct any constable to remove every booth, standing, and tent, and every carriage of whatsoever kind conveyed to or being upon the ground for the purpose of holding or continuing such fair, and to take into custody every person erecting, pitching, or fixing, or assisting to erect, pitch, or fix, any such booth, standing, or tent, and every person driving, accompanying, or conveyed in every such carriage, and every person resorting to such ground with any show or instrument of gambling or amusement; and every person convicted before a magistrate of any of the offences last aforesaid shall be liable to a penalty not more than ten pounds.

40. *On entering into recognizance, question as to right of title to fair may be tried in the Queen's Bench.*—Provided nevertheless, and be it enacted, that if the owner or occupier of the ground whereon any such fair has been usually holden shall, when summoned before the magistrate, enter into a recognizance in the penal sum of two hundred pounds (which recognizance such magistrate is hereby authorized to take) with condition to appear in the Court of Queen's Bench on the first day of the then next term and to answer to any information which her Majesty's Attorney or Solicitor General may exhibit against such owner or occupier touching his right and title to such fair, and to abide the judgment of the Court thereon, and to pay such costs as may be

awarded by the Court, which costs the said Court is hereby authorized to award, then, notwithstanding the magistrate may have declared such fair to be unlawful, the Commissioners of Police shall forbear from giving notice of such declaration, and from taking any further measures thereon, until judgment shall be given by the said Court against the right and title to such fair; and the magistrate taking such recognizance shall forthwith transmit the same to one of her Majesty's Principal Secretaries of State, to the end that the same may be filed in the said Court, and such further directions may be given thereon as to such Secretary of State may seem fit.

41. *Freemen of Vintners' Company subject to certain provisions.*—And be it declared and enacted, that after the passing of this act every person who by reason of his or her freedom of the mystery or craft of Vintners of the city of London, or of any right or privilege of such mystery, shall claim to be entitled to sell foreign wine by retail, to be drunk or consumed on the premises within the Metropolitan Police District, without licence, shall be subject to all the provisions of all acts made for the regulation of persons so licensed (except those provisions which require or refer to the taking out of a licence either from any justice of the peace or from the Commissioners of Excise), and, in the case of any offence committed by him or her against the tenor of the licence granted under the provisions of any act for the sale of excisable liquors by retail to be drunk or consumed on the premises, shall be liable to be dealt with, proceeded against, and punished in like manner as if selling wine by licence and not by virtue of such claim or privilege.

42. *Public houses to be shut on the mornings of Sundays, &c.*—And be it enacted, that no licensed victualler or other person shall open his house within the Metropolitan Police District for the sale of wine, spirits, beer, or other fermented or distilled liquors on Sundays, Christmas Day, and Good Friday before the hour of one in the afternoon, except refreshment for travellers.

43. *Publicans prohibited from supplying liquors to persons under sixteen years of age.*—And be it enacted, that every person licensed to deal in excisable liquors within the said district who shall knowingly supply any sort of distilled excisable liquor to any boy or girl apparently under the age of sixteen years, to be drunk upon the premises, shall be liable to a penalty not more than twenty shillings, and upon conviction of a second offence shall be liable to a penalty not more than forty shillings, and upon conviction of a third offence shall be liable to a penalty not more than five pounds.

44. *Regulations of 9 G. 4, c. 61, respecting public houses to extend to other houses of public resort.*—And whereas it is expedient that the provisions made by law for preventing disorderly conduct in the houses of licensed victuallers be extended to other houses of public resort; be it enacted, that every person who

shall have or keep any house, shop, room, or place of public resort within the Metropolitan Police District, wherein provisions, liquors, or refreshments of any kind shall be sold or consumed, (whether the same shall be kept or retailed therein or procured elsewhere,) and who shall wilfully or knowingly permit drunkenness or other disorderly conduct in such house, shop, room, or place, or knowingly suffer any unlawful games or any gaming whatsoever therein, or knowingly permit or suffer prostitutes or persons of notoriously bad character to meet together or remain therein, shall for every such offence be liable to a penalty of not more than five pounds: Provided always, that if the offender be a licensed victualler, or licensed to sell beer by retail to be drunk on the premises, this enactment shall not be construed to exempt him from the penalties or penal consequences to which he may be liable for committing an offence against the tenor of the licence to him granted.

45. *Penalty on keepers of cook shops, &c., making internal communication with an adjoining public house.*—And be it enacted, that every person who shall make or use or allow to be made or used any internal communication between any house, shop, room, or place of public resort not licensed for the sale of wine, spirits, beer, or other exciseable articles within the said district, and any house, shop, room, or place licensed for the sale of wine, spirits, beer, or other exciseable articles, or in which wine is sold by a free vintner, shall be liable to a penalty not more than ten pounds for every day that such communication shall be open.

46. *Power to enter unlicensed theatres, and take away persons found there.*—And be it enacted, that it shall be lawful for the said Commissioners of Police, by order in writing, to authorize any Superintendent belonging to the Metropolitan Police, with such constables as he may think necessary, to enter into any house or room kept or used within the said district for stageplays or dramatic entertainments into which admission is obtained by payment of money, and which is not a licensed theatre, at any time when the same shall be open for the reception of persons resorting thereto, and to take into custody all persons who shall be found therein without lawful excuse; and every person keeping, using, or knowingly letting any house or other tenement for the purpose of being used as an unlicensed theatre shall be liable to a penalty not more than twenty pounds, or in the discretion of the magistrate may be committed to the House of Correction, with or without hard labour, for a time not more than two calendar months; and every person performing or being therein without lawful excuse shall be liable to a penalty not more than forty shillings, and a conviction under this act for this offence shall not exempt the owner, keeper, or manager of any such house, room, or tenement from any penalty or penal consequences to which he may be liable for keeping a disorderly house, or for the nuisance thereby occasioned.

47. *Places used for bear-baiting, cock-fighting, &c.*—And be it enacted, that every person who within the Metropolitan Police District shall keep or use, or act in the management of any house, room, pit, or other place for the purpose of fighting or baiting lions, bears, badgers, cocks, dogs, or other animals, shall be liable to a penalty not more than five pounds, or in the discretion of the magistrate may be committed to the house of correction, with or without hard labour, for a time not more than one calendar month; and it shall be lawful for the Commissioners of Police, by order in writing, to authorize any superintendent belonging to the Metropolitan Police Force, with such constables as he shall think necessary, to enter any premises kept or used for any of the purposes aforesaid, and take into custody all persons who shall be found therein without lawful excuse, and every person so found shall be liable to a penalty not more than five shillings, and a conviction under this act of this offence shall not exempt the owner, keeper, or manager of any such house, room, pit, or place from any penalty or penal consequence to which he may be liable for the nuisance thereby occasioned.

48. *Commissioners empowered to authorize superintendents of police to enter gaming houses.*—And be it enacted, that if any superintendent belonging to the Metropolitan Police Force shall report in writing to the said commissioners that there are good grounds for believing any house or room, within the Metropolitan Police District to be kept or used as a common gaming house, and if two or more householders dwelling within the said district, and not belonging to the Metropolitan Police Force, shall make oath in writing to be by them taken and subscribed before a magistrate, and annexed to the said report, which oath every magistrate is hereby empowered to administer and receive, that the premises complained of by the superintendent are commonly reported and are believed by the deponents to be kept or used as a common gaming house, it shall be lawful for the commissioners, by order in writing, to authorize the superintendent to enter any such house or room, with such constables as shall be directed by the commissioners to accompany him, and, if necessary, to use force for the purpose of effecting such entry, whether by breaking open doors or otherwise, and to take into custody all persons who shall be found therein, and to seize and destroy all tables and instruments of gaming found in such house or premises, and also to seize all monies and securities for money found therein; and the owner or keeper of the said gaming house, or other person having the care and management thereof, and also every banker, croupier, and other person who shall act in any manner in conducting the said gaming house, shall be liable to a penalty not more than one hundred pounds, or, in the discretion of the magistrates before whom he shall be convicted of the offence, may be committed to the house of correction, with or without hard labour, for a time not more than six calendar months; and upon

conviction of any such offender all the monies and securities for monies which shall have been seized as aforesaid shall be paid to the said receiver, to be by him applied towards defraying the charge of the police of the metropolis; and every person found in such premises without lawful excuse shall be liable to a penalty not more than five pounds: Provided always, that nothing herein contained shall prevent any proceeding by indictment against the owner or keeper or other person having the care or management of any gaming house; but no person shall be proceeded against by indictment and also under this act for the same offence.

49. *Proof of gaming for money not necessary in support of informations for gaming.*—And be it enacted, that it shall not be necessary, in support of any information for gaming in, or suffering any games or gaming in, or for keeping or using or being concerned in the management or conduct of a common gaming house, under this act, to prove that any person found playing at any game was playing for any money, wager, or stake.

50. *Penalty on pawnbrokers receiving pledges from persons under the age of 16.*—And be it enacted, that after the passing of this act every pawnbroker within the Metropolitan Police District, and every agent or servant employed by any such pawnbroker, who shall purchase or receive or take any goods or chattels in pawn or pledge of or from any person apparently under the age of sixteen years shall be liable to a penalty not more than five pounds.

51. *Empowering the commissioners of police to regulate the route and conduct of persons driving stage carriages, cattle, &c. during the hours of divine service.*—And be it enacted that on the application of the minister or churchwardens of any church, chapel, or other place of public worship within the Metropolitan Police District to the Commissioners of Police, it shall be lawful for the said commissioners to make orders for regulating the route and conduct of persons who shall drive any cart or carriage, or who shall drive any cattle, sheep, pigs, or other animals, within such parish or place during the hours of divine service on Sunday, Christmas Day, Good Friday, or any day appointed for a public fast or thanksgiving, and any orders which shall be so made shall be printed and affixed on or near the church, chapel, or place of public worship to which the same shall refer, and in some conspicuous places leading to and contiguous thereto, and elsewhere, as the commissioners of police shall direct; and every breach of any such order shall be deemed a separate offence.

52. *Regulations for preventing obstructions in the streets during public processions, &c.* And be it enacted, that it shall be lawful for the commissioners of police from time to time and as occasion shall require, to make regulations for the route to be observed by all carts, carriages, horses, and persons, and for preventing obstruction of the streets and thoroughfares within the Metropolitan Police District,

in all times of public processions, public rejoicings, or illuminations, and also to give directions to the constables for keeping order and for preventing any obstruction of the thoroughfares in the immediate neighbourhood of her Majesty's palaces and the public offices, the High Court of Parliament, the Courts of Law and Equity, the Police Courts, the theatres, and other places of public resort, and in any case when the streets or thoroughfares may be thronged or may be liable to be obstructed.

53. *Proprietors of stage carriages not liable to penalties for deviating from route.*—And be it enacted, that no proprietor of any stage carriage duly licensed to carry passengers for hire shall be liable to any penalty for any deviation from the route or line of route specified in his licence, which the driver of such stage carriage shall make by virtue of any regulations or direction made or given by the Commissioners of Police.

54. *Prohibition of nuisances by persons in the Thoroughfares.*—And be it enacted, that every person shall be liable to a penalty not more than forty shillings, who within the limits of the Metropolitan Police District, shall, in any thoroughfare or public place commit any of the following offences; (that is to say,)

1. Every person who shall, to the annoyance of the inhabitants or passengers, expose for show or sale (except in a market lawfully appointed for that purpose,) or feed or fodder any horse or other animal, or show any caravan containing any animal or any other show or public entertainment, or shoe, bleed, or farry any horse or animal, (except in cases of accident,) or clean, dress, exercise, train, or break any horse or animal, or clean, make or repair any part of any cart or carriage, except in cases of accident where repair on the spot is necessary;
2. Every person who shall turn loose any horse or cattle, or suffer to be at large any unmuzzled ferocious dog, or set on or urge any dog or other animal to attack, worry, or put in fear any person, horse or other animal.
3. Every person who by negligence or ill usage in driving cattle shall cause any mischief to be done by such cattle, or who shall in anywise misbehave himself in the driving, care, or management of such cattle, and also every person not being hired or employed to drive such cattle who shall wantonly and unlawfully pelt, drive or hunt any such cattle;
4. Every person having the care of any cart or carriage who shall ride on any part thereof, on the shafts, or on any horse or other animal drawing the same, without having and holding the reins, or who shall be at such a distance from such cart or carriage as not to have the complete control over every horse or other animal drawing the same;
5. Every person who shall ride or drive furiously, or so as to endanger the life or

- limb of any person, or to the common danger of the passengers in any thoroughfare :
6. Every person who shall cause any cart, public carriage, sledge, truck, or barrow, with or without horses, to stand longer than may be necessary for loading or unloading, or for taking up or for setting down passengers, except hackney carriages standing for hire in any place not forbidden by law, or who by means of any cart, carriage, sledge, truck, or barrow, or any horse or other animal, shall wilfully interrupt any public crossing, or wilfully cause any obstruction in any thoroughfare :
  7. Every person who shall lead or ride any horse or other animal, or draw or drive any cart or carriage, sledge, truck, or barrow, upon any footway or curbstone, or fasten any horse or other animal so that it can stand across or upon any footway :
  8. Every person who shall roll or carry any cask, tub, hoop, or wheel, or any ladder, plank, pole, showboard, or placard, upon any footway, except for the purpose of loading or unloading any cart or carriage, or of crossing the footway :
  9. Every person who, after being made acquainted with the regulations or directions which the Commissioners of Police shall have made for regulating the route of horses, carts, carriages, and persons during the time of divine service, and for preventing obstructions during public processions, and on other occasions hereinbefore specified, shall wilfully disregard or not conform himself thereunto :
  10. Every person who, without the consent of the owner or occupier, shall affix any posting bill or other paper against or upon any building, wall, fence, or pale, or write upon, soil with chalk or paint, or in any other way whatsoever, or wilfully break, destroy, or damage any part of any such building, wall, fence, or pale, or any fixture or appendage thereunto, or any tree, shrub, or seat in any public walk, park, or garden :
  11. Every common prostitute or nightwalker loitering or being in any thoroughfare or public place for the purpose of prostitution or solicitation to the annoyance of the inhabitants or passengers :
  12. Every person who shall sell or distribute or offer for sale or distribution, or exhibit to public view, any profane, indecent, or obscene book, paper, print, drawing, painting, or representation, or sing any profane, indecent, or obscene song or ballad, or write or draw any indecent or obscene word, figure, or representation, or use any profane, indecent, or obscene language to the annoyance of the inhabitants or passengers :
  13. Every person who shall use any threatening, abusive, or insulting words or behaviour with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned :
  14. Every person, except the guards and postmen belonging to her Majesty's Post Office in the performance of their duty, who shall blow any horn or use any other noisy instrument for the purpose of calling persons together, or of announcing any show or entertainment, or for the purpose of hawking, selling, distributing, or collecting any article whatsoever, or of obtaining money or alms :
  15. Every person who shall wantonly discharge any fire-arms, or throw or discharge any stone or other missile, to the damage or danger of any person, or make any bonfire, or throw or set fire to any firework :
  16. Every person who shall wilfully and wantonly disturb any inhabitant by pulling or ringing any door-bell or knocking at any door without lawful excuse, or who shall wilfully and unlawfully extinguish the light of any lamp :
  17. Every person who shall fly any kite or play at any game to the annoyance of the inhabitants or passengers, or who shall make or use any slide upon ice or snow in any street or other thoroughfare, to the common danger of the passengers.
- And it shall be lawful for any constable belonging to the Metropolitan Police Force to take into custody, without warrant, any person who shall commit any such offence within view of any such constable.
55. *Cannon, &c. not to be fired near dwelling-houses.*—And be it enacted, that no person other than persons acting in obedience to lawful authority shall discharge any cannon or other fire-arms of greater calibre than a common fowling-piece within three hundred yards of any dwelling-house within the said district to the annoyance of any inhabitant thereof, and every person who after being warned of the annoyance by any inhabitant shall discharge any such fire-arm shall be liable to a penalty not more than five pounds.
56. *Dog carts &c. prohibited after 1st January 1840.*—And be it enacted, that after the first day of January next every person who within the Metropolitan Police District shall use any dog for the purpose of drawing or helping to draw any cart, carriage, truck, or barrow shall be liable to a penalty not more than forty shillings for the first offence, and not more than five pounds for the second or any following offence.
57. *Street musicians to depart when desired so to do.*—And be it enacted, that it shall be lawful for any householder within the Metropolitan Police District, personally, or by his servant, or by any police constable, to require any street musician to depart from the neighbourhood of the house of such householder on account of the illness of any inmate of such house, or for other reasonable cause, and every person who shall sound or play upon any musical instrument in any thoroughfare near any house after being so required to depart shall be liable to a penalty not more than forty shillings.
58. *Drunkards guilty of riotous or indecent*

*behaviour may be imprisoned.*—And be it enacted, that every person who shall be found drunk in any street or public thoroughfare within the said district, and who while drunk shall be guilty of any riotous or indecent behaviour, and also every person who shall be guilty of any violent or indecent behaviour in any Police Station House, shall be liable to a penalty of not more than forty shillings for every such offence, or may be committed, if the magistrate before whom he shall be convicted shall think fit, instead of inflicting on him any pecuniary penalty, to the house of correction for any time not more than seven days.

59. *Persons using carriages without driver's consent liable to penalty.*—And be it enacted, that every person who shall ride upon or cause himself to be carried or drawn by any carriage within the Metropolitan Police District without the consent of the owner or driver thereof, shall be liable to a penalty not more than five shillings, or if a child apparently under the age of twelve years it shall be lawful for the magistrate to cause such child to be detained until his parent or guardian can attend for the purpose of having such child delivered into his care, and if such parent or guardian do not so attend before the closing of the Police Court for the day it shall be lawful for the magistrate to order such child to be discharged.

60. *Prohibition of other nuisances.*—And be it enacted, that every person who, in any street or public place within the limits of the Metropolitan Police District, shall be guilty of any of the following offences, shall be liable to a penalty not more than forty shillings for every such offence; (that is to say);

1. Every person who in any thoroughfare shall burn, dress, or cleanse any cork, or hoop, cleanse, fire, wash, or scald any cask or tub, or hew, saw, bore, or cut any timber or stone, or slack, sift, or screen any lime:

2. Every person who shall throw or lay in any thoroughfare any coals, stones, slates, shells, lime, bricks, timber, iron or other materials (except building materials, or rubbish thereby occasioned, which shall be placed or inclosed so as to prevent any mischief happening to passengers):

3. Every person who in any thoroughfare shall beat or shake any carpet, rug, or mat (except door mats before the hour of eight in the morning), or throw or lay any dirt, litter, or ashes, or any carrion, fish, offal, or rubbish, or throw or cause any such thing to fall into any sewer, pipe, or drain, or into any well, stream, or water-course, pond or reservoir for water, or cause any offensive matter to run from any manufactory, brewery, slaughterhouse, butcher's shop, or dunghill, into any thoroughfare, or any uncovered place, whether or not surrounded by a wall or fence; but it shall not be deemed an offence to lay sand or other materials in any thoroughfare in time of frost to prevent accidents, or litter or other materials to

prevent the freezing of water in pipes, or in case of sickness to prevent noise, if the party laying any such things shall cause them to be removed as soon as the occasion for them shall cease:

4. Every person who shall empty or begin to empty any privy between the hours of six in the morning and twelve at night, or remove along any thoroughfare any night soil, soap lees, ammoniacal liquor, or other such offensive matter, between the hours of six in the morning and eight in the evening, or who shall at any time use for any such purpose any cart or carriage not having a proper covering, or who shall wilfully or carelessly slop or spill any such offensive matter in the removal thereof, or who shall not carefully sweep and clean every place in which any such offensive matter shall have been placed, slopped, or spilled; and in default of the apprehension of the actual offender the owner of the cart or carriage employed for any such purpose shall be deemed to be the offender: Provided always, that this enactment shall not be construed to prevent the commissioners of any sewers within the Metropolitan Police District, or any person acting in their service or by their direction, from emptying or removing along any thoroughfare at any time the contents of any sewer which they are authorised to cleanse or empty:

5. Every person who shall keep any pigstye to the front of any street or road in any town within the said district, not being shut out from such street or road by a sufficient wall or fence, or who shall keep any swine in or near any street, or in any dwelling, so as to be a common nuisance:

6. Every occupier of a house or other tenement in any town within the said district who shall not keep sufficiently swept and cleansed all footways, and watercourses adjoining to the premises occupied by him; and if any tenement be empty or unoccupied the owner thereof shall be deemed the occupier with reference to this enactment:

7. Every person who shall expose any thing for sale in any park or public garden, unless with the consent of the owner or other person authorized to give such consent, or upon or so as to hang over any carriageway or footway, or on the outside of any house or shop, or who shall set up or continue any pole, blind, awning, line, or any other projection from any window, parapet, or other part of any house, shop, or other building, so as to cause any annoyance or obstruction in any thoroughfare:

8. Every person who, to the danger of passengers in any thoroughfare, shall leave open any vault or cellar, or the entrance from any thoroughfare to any cellar or room underground, without a sufficient fence or handrail, or leave defective

the door, window, or other covering of any vault or cell, or who shall not sufficiently fence any area, pit, or sewer left open in or adjoining to any thoroughfare, or who shall leave such open area, pit, or sewer without a sufficient light after sunset to warn and prevent persons from falling thereinto.

61. *Mad dogs, &c.*—And be it enacted, that it shall be lawful for any constable belonging to the Metropolitan Police Force to destroy any dog or other animal reasonably suspected to be in a rabid state, or which has been bitten by any dog or animal reasonably suspected to be in a rabid state; and the owner of any such dog or animal who shall permit the same to go at large after having information or reasonable ground for believing it to be in a rabid state, or to have been bitten by any dog or other animal in a rabid state, shall be liable to a penalty not more than five pounds.

62. *Compensation for hurt or damage not exceeding 10l.*—And be it enacted, that every person who, by committing any offence herein forbidden within the said district, shall have caused any hurt or damage to any person or property, may be apprehended, with or without any warrant, by any constable, and if he shall not, upon demand, make amends for such hurt or damage to the satisfaction of the person aggrieved, he shall be detained by the constable in order to be taken before a magistrate, and upon conviction shall pay such a sum not more than ten pounds, as shall appear to the magistrate before whom he shall be convicted to be reasonable amends to the person aggrieved, besides any penalty to which he may be liable for the offence, and the evidence of the person aggrieved shall be admitted in proof of the offence: Provided always, that if the person aggrieved shall have been the only witness examined in proof of the offence, the sum ordered as amends shall be paid and applied in the same manner as a penalty.

63. *Constables may apprehend any offender whose name and residence is not known.*—And be it enacted, that it shall be lawful for any constable belonging to the Metropolitan Police District, and for all persons whom he shall call to his assistance, to take into custody without a warrant, any person who within view of any such constable shall offend in any matter against this act, and whose name and residence shall be unknown to such constable, and cannot be ascertained by such constable.

64. *Constables may apprehend without warrant in certain cases.*—And be it enacted, that it shall be lawful for any constable belonging to the Metropolitan Police to take into custody, without a warrant, all loose, idle, and disorderly persons whom he shall find disturbing the public peace, or whom he shall have good cause to suspect of having committed or being about to commit any felony, misdemeanor, or breach of the peace, and all persons whom he shall find between sunset and the hour of eight in the morning, lying or loitering in any highway, yard, or other place, and not giving a satisfactory account of themselves.

65. *Persons charged with recent assaults may be apprehended without warrant.*—And be it enacted, that it shall be lawful for any constable belonging to the Metropolitan Police Force to take into custody, without warrant, any person who within the limits of the Metropolitan Police District shall be charged by any other person with committing any aggravated assault, in every case in which such constable shall have good reason to believe that such assault has been committed, although not within view of such constable, and that by reason of the recent commission of the offence a warrant could not have been obtained for the apprehension of the offender.

66. *Power to police constables and persons aggrieved to apprehend certain offenders.*—And be it enacted, that any person found committing any offence punishable either upon indictment or as a misdemeanour upon summary conviction, by virtue of this act, may be taken into custody without a warrant by any constable, or may be apprehended by the owner of the property on or with respect to which the offence shall be committed, or by his servant or any person authorised by him, and may be detained until he can be delivered into the custody of a constable to be dealt with according to law; and every such constable may also stop, search and detain any vessel, boat, cart, or carriage in or upon which there shall be reason to suspect that any thing stolen or unlawfully obtained may be found, and also any person who may be reasonably suspected of having or conveying in any manner any thing stolen or unlawfully obtained; and any person to whom any property shall be offered to be sold, pawned, or delivered, if he shall have any reasonable cause to suspect that any such offence has been committed with respect to such property, or that the same or any part thereof has been stolen or otherwise unlawfully obtained, is hereby authorised, and if in his power is required, to apprehend and detain, and as soon as may be to deliver such offender into the custody of a constable, together with such property, to be dealt with according to law.

67. *Removing furniture to evade rent.*—And be it enacted, that it shall be lawful for any constable to stop and detain, until due inquiry can be made, all carts and carriages which he shall find employed in removing the furniture of any house or lodging between the hours of eight in the evening and six in the following morning, or whenever the constable shall have good grounds for believing that such removal is made for the purpose of evading the payment of rent.

68. *Horses, carriages, &c. of offenders may be detained.*—And be it enacted, that whenever any person having charge of any horse, cart, carriage, or boat, or any other animal or thing, shall be taken into the custody of any constable under the provisions of this act, it shall be lawful for any constable to take charge of such horse, cart, carriage, or boat, or such other animal or thing, and to deposit the same in some place of safe custody, as a security for

payment of any penalty to which the person having had charge thereof may become liable, and for payment of any expences which may have been necessarily incurred for taking charge of and keeping the same; and it shall be lawful for any magistrate before whom the case shall have been heard to order such horse, cart, carriage, or boat, or such other animal or thing, to be sold, for the purpose of satisfying such penalty, and reasonable expences in default of payment thereof, in like manner as if the same had been subject to be distrained, and had been distrained for the payment of such penalty and reasonable expences.

69. *Persons apprehended without warrant to be taken to the Station House.*—And be it enacted, that every person taken into custody by any constable belonging to the Metropolitan Police, without warrant, except persons detained for the mere purpose of ascertaining their name or residence, shall be forthwith delivered into the custody of the constable in charge of the nearest station house, in order that such person may be secured until he can be brought before a magistrate to be dealt with according to law, or may give bail for his appearance before a magistrate, if the constable in charge shall deem it prudent to take bail in the manner hereinafter mentioned.

70. *Power to take recognizances at station houses on petty charges.*—And be it enacted, that whenever any person charged with any offence of which he is liable to be summarily convicted before a magistrate, or with having carelessly done any hurt or damage, shall be, without the warrant of a magistrate, in the custody of any constable of the Metropolitan Police in charge of any station house during the time when the Police Courts shall be shut, it shall be lawful for such constable, if he shall deem it prudent, to take the recognizance of such person, with or without sureties, conditioned as herein-after mentioned.

71. *Power to bind over persons making charges.*—And be it enacted, that whenever any person charged with any felony, or any misdemeanor punishable by transportation, or other grave misdemeanor, shall be, without warrant, in the custody of any constable of the Metropolitan Police, at any station house, during the time when the Police Courts shall be shut, it shall be lawful for the constable in charge of the station house to require the persons making such charge to enter into a recognizance conditioned as herein-after mentioned, and upon his or her refusal so to do it shall be lawful for such constable, if he shall deem it prudent, to discharge from custody the person so charged, upon his or her recognizance, with or without sureties, conditioned as herein-after mentioned.

72. *Condition of recognizance.*—And be it enacted, that every recognizance so taken shall be without fee or reward, and shall be conditioned for the appearance of the person thereby bound before a magistrate of the district in which such station house shall be situated, at his next sitting, and the time and place of appearance shall be specified in the recogni-

zance; and the constable shall enter in a book, to be kept for that purpose at every such station house, the name, residence, and occupation, of the party, and his surety or sureties (if any) entering into such recognizance, together with the condition thereof, and the sum thereby acknowledged, and shall return every such recognizance to the magistrate present at the time and place when and where the party is bound to appear.

73. *Penalty of offences for which no penalty is appointed.*—And be it enacted, that for every misdemeanor or other offence against this act for which no special penalty is herein-before appointed, the offender shall, at the discretion of the magistrate before whom the conviction shall take place, either be liable to a penalty not more than five pounds, or be imprisoned for any time not more than one calendar month in any gaol or house of correction within the jurisdiction of such magistrate.

74. *Not to repeal local acts containing penalties.*—Provided always, and be it enacted, that nothing herein contained shall be construed to prevent any person from being indicted for any indictable offence made punishable on summary conviction by this act, or to prevent any person from being liable under any other act or acts to any other or higher penalty or punishment than is provided for such offence by this act, so nevertheless that no person be punished twice for the same offence.

75. *Meaning of the word "Magistrate."*—And be it enacted, that in the construction of this act the word "magistrate" shall be taken to mean and include every justice of the peace appointed to be a magistrate of the Police Courts of the Metropolis, and also every justice of the peace acting in and for any part of the Metropolitan Police District for which no police court shall be established.

76. *Offences how to be tried.*—And be it enacted, that every such magistrate shall be empowered summarily to convict any person charged with any offence against this act, on the oath of one or more witnesses or by his own confession, and to award the penalty or punishment herein provided for such offence; and the matter of such complaint shall be heard and determined by one of the justices appointed to be a magistrate of one of the Police Courts of the metropolis at one of the said Police Courts; or if the offence shall have been committed or the offender apprehended in any part of the Metropolitan Police District for which no Police Court shall be established as aforesaid, the matter of such complaint may be also heard and determined by any two or more justices acting in and for the county in which the offence was committed or the offender apprehended.

77. *If penalty is not paid, the offender may be committed.*—And be it enacted, that in every case of the adjudication of a pecuniary penalty or amends under this act, and nonpayment thereof, it shall be lawful for the magistrate to commit the offender to any gaol or house of correction within his jurisdiction for a term not more than one calendar month, where the sum

to be paid shall not exceed five pounds, the imprisonment to cease on payment of the sum due; and the costs for the recovery thereof, and so much of every such pecuniary penalty as shall not be awarded to the informer or other persons who have contributed to the conviction, shall be paid to the receiver of the Metropolitan Police for the purposes of this act; and the residue thereof, under the direction of the magistrate by whom the same shall have been adjudged, shall be paid and applied either to the use of the informer alone or to the use of such persons as shall have contributed to the conviction of the offender, in such shares and proportions as such magistrate shall think fit.

78. *Interpretation clause.*—And be it enacted that in the construction of this act, unless there be something in the context repugnant thereunto, any word denoting the singular number or the male sex shall be taken to extend to any number of persons or things and to both sexes; and that all things herein authorized to be done by the Commissioners of Police of the Metropolis may be done by either of them.

79. *This act to be construed with 10 G. 4, c. 44.*—And be it enacted that this act shall be construed as one act with the said act passed in the tenth year of the reign of King George the Fourth for the improvement of police in and near the metropolis; and that all the provisions of the said act, except so far as is herein otherwise provided; shall extend to this act, and to all things done in execution of this act.

80. *Act may be altered this session.*—And be it enacted, that this act may be amended or repealed by any act to be passed in this present session of parliament.

[In our next number we shall call the attention of our readers to such parts of this act as seem more particularly to concern the general practitioner.]

## THE PRIVATE BUSINESS OF THE HOUSE OF COMMONS.

THE Select Committee of the House of Commons on Private Business have just made their Second Report, which we consider of much interest to the profession. It relates to various suggested improvements in the mode of conducting this branch of business. We shall give the Report as it stands, but we shall call attention hereafter to the evidence, particularly that of Mr. Tyrrell, which opens some larger views on the subject.

### REPORT.

The Committee appointed to consider whether any and what improvement can be adopted in the mode of conducting private business, have considered the matters to them referred, and have agreed to the following Report.

In compliance with the recommendation contained in the Report of the Committee of

the last session, two professional men were employed, under directions received from the Government, "to classify the private bills, and prepare drafts of general bills;" and a report was submitted to your Committee from those gentlemen, accompanied with forms of bills; the correspondence relating to which will be found in the Appendix, to which your Committee beg to refer.

Upon consideration of those documents, your Committee deemed it advisable to refer them to some eminent conveyancer for his opinion and advice, and accordingly they were referred to Mr. Tyrrell, whose letter in reply will also appear in the Appendix. This gentleman likewise attended to explain his views, and, particular reference is requested by your Committee to the evidence which he gave upon the subject.

Your Committee, anticipating great benefit from the adoption of Mr. Tyrrell's suggestions and agreeing with him in the importance, with a view to the preparation of general private bills against next sessions, of obtaining the co-operation and concurrence of the other House of Parliament, directed their chairman to communicate upon the subject with the Chairman of the Committees of the House of Lords.

The result of this communication has not, however, been such as to render it probable that the immediate concurrence of the other House would be obtained in carrying the proposed plan into effect, and under these circumstances, your Committee have not considered it desirable to recommend to the House to direct the adoption of the course suggested by Mr. Tyrrell during the ensuing recess; but they at the same time, earnestly recommend his suggestions to the attention of members, with a view to their being further considered next session.

Your Committee have likewise had under their notice the preparation of briefs of private bills, which has been continued during the present session, under the direction of the House, by Mr. Booth, the officer originally intrusted with this duty, and they have reason to believe that experience has fully borne out the opinion expressed by your Committee of 1838, as to the great advantage arising from these documents, as prepared by Mr. Booth.

Your Committee are therefore of opinion, that it is desirable to continue this system, and they have considered the propriety of recommending the permanent appointment of an officer of the House for that purpose. By the act of this session for the better trial of Controverted Elections, it is provided that an officer shall be appointed for certain purposes therein mentioned, such as the examination of recognizances, and the taxation of costs. It appears to your Committee, that the duties there designated may be advantageously united with that of the preparation of briefs, and also that many incidental advantages may arise from the House, as well as the executive, having within its power to call for the assistance of such an officer, when required, in the pre-



paration and revision of bills and other business connected with legislation.

They would therefore recommend a substitution for the existing arrangement, the permanent appointment of an officer under the direction of the Speaker, charged with the duties referred to, and to whom a salary of 1,500*l.* a-year may be assigned.

It has been ascertained that Mr. Booth would accept such an appointment, with the understanding that he is to abandon private practice, and devote his whole time to the performance of his duties.

Your Committee have further to call the attention of the House to the evidence given by Mr. Estcourt, the Chairman of the Committee on Standing Orders, and of the Committee of Selection, in relation to the working of the system adopted by the House for the constitution of Committees on Private Bills at the commencement of this session. They feel great satisfaction at the advantages which it appears from his testimony have resulted from this change, and they earnestly recommend to the House steadily to persevere in the plan, with such amendments as have been suggested by Mr. Estcourt, or may be found desirable from further experience.

The attention of your Committee was drawn to a proposed revision of the Standing Order, No. 6, p. 25, providing for a renewed application to Parliament in respect of a railway. It was suggested that by a possible construction of that order, parties who might have failed, from whatever cause, in carrying their bill during the present session, might be precluded from renewing or repeating their application to Parliament during the next session.

Your Committee were decidedly of opinion that such a construction of the order, if correct, would operate with great injustice to parties desirous of renewing or repeating a *bond fide* application of this nature; but on a careful consideration of the terms of the order, they were of opinion that, according to its true construction and obvious intention, such an application to Parliament would be sanctioned, and they have thought it inexpedient without actual proof of its necessity to propose any alteration.

9th August, 1839.

## LEGAL DISCUSSION SOCIETIES.

*To the Editor of the Legal Observer.*

I CANNOT refrain rendering to you my thanks for the insertion, and consequent publicity of D. H. S.'s letter upon this subject. Without assuming the merit of deep reflection, I may be permitted to avow my opinion that these societies will afford a remedy for one of the most striking and humiliating defects of the law student, which has long been apparent to me; but like many other useful fruits of individual meditation, had been laid aside for want of that co-operation with my fellows which your pages are a medium for obtaining. Your cor-

respondent exhausts pretty well all that can be said, or rather all that is necessary to be said, in favour of discussion, for little can be requisite to win the approbation of those capable of a moment's thought. Without attempting to add any additional statement of further advantage, I may perhaps be allowed to refer to the best evidence of the existence of the benefit. I allude to that which may be found at the bar. I believe the truest test of the legal man—the brightest trait in the distinguished advocate—is that familiarity with adjudicated cases which proves a coat of mail against the catching interrogations, so often started from the bench in the course of argument. With pain I have frequently observed the inefficient junior laid prostrate by a side-wind from the judge; but as repeatedly have I witnessed with admiration the dexterous avoidance of its consequences by the accomplished lawyer. What knowledge of the law can equal that resulting from the acute investigation of a case, to ascertain its immovable principle or its vulnerable part, according as it may be for or against the interests of the client; the mind whetted by the consciousness of duty, or an ambition to excel: the only good substitute capable of prompting and calling out the finest powers of human intellect.

I wish to know whether I have a choice of the two societies named. I am not articulated to a member of the Incorporated Law Society; and it has been stated to me that none of its advantages are within the reach of the clerk, unless with a gentleman who belongs to it, from which I concluded the Student's Society at the Institution was not open to me. The note appended by you to D. H. S.'s letter has occasioned a doubt I shall feel obliged to your removing.

I cannot close without proclaiming, that as a new subscriber to your periodical, I was singularly fortunate in almost my first number to find a clue to the attainment of a long cherished hope;—that of becoming a member of a society second to none in utility.

W. B. J.

[We recommend our correspondent to address a letter to the Secretary of the Law Student's Society at the Law Institution. Ed.]

## GRIEVANCES OF THE PROFESSION.

### LAW REPORTING.

*To the Editor of the Legal Observer.*

Sir,

I REMEMBER that the state of the law reports has been occasionally adverted to in your pages, and they constitute a real professional grievance. I fear there is no chance of restoring the good old practice of authorized reports, nor of restricting the publication to such as are really necessary and useful, and reasonably condensed, so long as a sufficient number of our professional brethren can be found to pay from 6*s.* to 10*s.* a number for all the rubbish that is published.

A great proportion of the profession could and would contrive to take in one series of reports of cases determined in the Courts of Common Law and Equity, if they were confined, as they ought to be, to cases arising on new acts of parliament, or establishing a new principle, or settling the law by a careful review of previous conflicting decisions, or new points of practice, and these given in a condensed form,—stating the arguments of counsel only in particular cases in which they may be material in elucidating the grounds of the decision,—and published at a moderate price. But there is not one attorney in a hundred who can afford to, or does, in fact, take in the reports now published. The only remedy for the grievance is in the hands of the profession, and that is to discontinue them, and take in lieu the analysis of cases now published much earlier and more regularly than the reports.

Having been much addicted to book collecting in general, on entering the profession, I incurred a great expense in forming my law library, and laid in the Year Books, nearly all the old reports, and a regular series of the reports in each Court down to the time. Having been guilty of that folly, I was led on, from year to year, to a continuance of it, merely because I did not like to spoil my sets of reports; but at length I became so thoroughly sickened by the prostitution of the system of reporting, that I ordered my bookseller not to send me another number of any report, which I never have regretted. The general adoption of the same course will infallibly lead to the desired reform.

DIGESTER.

[We have omitted some remarks of our correspondent on one of the reports, which we have not felt ourselves justified in publishing. ED.]

## SUPERIOR COURTS.

### Lord Chancellor's Court.

#### LUNATIC'S ESTATES.—DUTY OF COMMITTEES.

*If the committee of a lunatic will take on himself to lay out money in respect of the lunatic's estate without obtaining the previous sanction of the Court, he shall have to pay the costs of enquiring whether such outlay was necessary, before it can be allowed in his account.*

The Lord Chancellor regards with the greatest vigilance applications for payments of money out of the estates of lunatics, and never grants an order of that sort without the most diligent enquiry. We have already reported, by way of notice, some observations of his Lordship on an application respecting the costs of an action brought by a lunatic's committee without coming for the sanction of the Court; see *ante*, p. 235. His Lordship has since that case more than once declared his determination.

Mr. Wigram moved to confirm the Master's report, by which it was certified that certain repairs, ordered to be done to the estate of the lunatic by his committee, were necessary and proper.

The Lord Chancellor said, the committee should have applied for the sanction of the Court before he took on himself to order repairs, requiring an outlay of money. So many cases had occurred and were occurring daily, in which committees of lunatics laid out money without previous inquiry or sanction, that it became necessary to put some check on the practice. He would confirm the master's report in the present case, but he would take care for the future that all committees, who, in like circumstances, came to the Court for an indemnity after making an outlay of money unauthorised by the Court, should in the first place pay the costs of inquiries before the Master whether such expenditure was necessary and proper.

*In the matter of Churchill.* Sitings at Lincoln's Inn, July 27th, 1839.

A similar application having been made some days after, his Lordship repeated his determination to enforce most strictly the rule which he had laid down, as above. He, in this case also, would confirm the Master's report, allowing the sum certified by the Master to the committee of the lunatic, and he made this exception to the rule because it appeared by the petition and report that this money had been expended before his determination was made known; that if committees expended money in lunatic's estates without the authority of the Court, they must themselves be at the loss, or at all events should pay the costs of references to inquire whether such expenditure was necessary and proper.

*In re —, a lunatic.* Sitings at Lincoln's Inn, August 3rd, 1839.

#### LANDLORD AND TENANT.—SPECIFIC PERFORMANCE.

*An agreement to take a lease, the landlord putting the premises in repair. Tenant took possession, and on his urgent applications the repairs were made after much delay, and a lease was tendered, containing certain covenants in the landlord's lease. Held, under the circumstances, that the delay in doing the repairs and the tenant's previous ignorance of the covenants could not excuse him from accepting the lease, and specific performance was decreed.*

This was an appeal from an order made by the Vice Chancellor. The facts were shortly these. The plaintiff by a memorandum in writing agreed to let, and the defendant, the Hon. Erskine Cochrane, agreed to take certain premises in King's Arms Yard, Golden Square, for twenty-one years, at a rent of 50*l.* a-year, the plaintiff agreeing to put the premises in a proper state of repair. The defendant entered into possession in September 1830, and in November—the repairs going on in the meanwhile—a draft of the intended lease was sent to him for perusal. No notice was taken of this draft, and no lease was executed, but the defendant sent repeatedly to the plaintiff to have repairs done, until 1833, when he expressed himself satisfied. The plaintiff then pressed for the execution of the lease, but the

defendant refused to bind himself further than as a tenant from year to year; and he alleged as his reason for such refusal that the repairs had not been executed in due time, and that the lease contained covenants to do things which the plaintiff had not made him acquainted with; those covenants being contained in the original lease by which the plaintiff held under the Crown. The Vice Chancellor decreed against the defendant for a specific performance of his contract.

Mr. *Wigram* and Mr. *Wilcock* were in support of the decree.

Mr. *Richards* and Mr. *Stinton*, on the other side, contended that by the contract the lease was to be consequential to the repairs, and that as the repairs had not been done in a reasonable time the plaintiff could not now insist on the fulfilment of the contract. And another objection by the defendant was that the plaintiff did not make him, defendant, acquainted with those covenants in the original lease which might render the property to him utterly valueless.

The Lord Chancellor said the contract must be fulfilled. The defendant at an early period was furnished with a draft of the intended lease under the contract. He took no notice of it, but went on calling on the plaintiff, at different times, for more than two years, to execute repairs under the contract, and then when the repairs were finished, he proposed to get rid of the contract, which formed the basis of the demand he had made for the repairs, and which he admitted had been complied with. If he did not know the covenants in the original lease, that was his own fault. There must be an end of all the equitable jurisdiction of the Court in such cases if such a contract was not enforced. There must be a decree for a specific performance, according to the prayer of the bill.

*Nash v. Cochrane.* Sittings at Lincoln's Inn, August 1839.

#### Vice Chancellor's Court.

##### PRACTICE.—INJUNCTION.—NEW ORDERS.

*The third of the General Orders issued on the 9th of May, 1839, entitling a plaintiff, after amending his bill, to move for an injunction to stay proceedings at law upon affidavit of the truth of the amendments, in case the defendant does not plead, answer, or demur to the bill within eight days after appearing to it, is not applicable to cases that occurred anterior to the date of the orders.*

The original bill in this case prayed a full account and discovery of various commercial transactions between the defendant and the plaintiffs; and that he might be ordered to pay what should appear due to the plaintiffs on such account, and that he might, in the meantime, be restrained from proceeding with an action at law, which the defendant had brought to recover damages from the plaintiffs for refusing to accept certain bills of exchange for him, contrary, as he alleged, to a contract.

The plaintiffs applied for and obtained an injunction as prayed for. The defendant put in his answer, and gave inspection of all accounts, &c., after which the Lord Chancellor, on the 27th of February, dissolved the injunction on the merits. The plaintiffs amended their bill on the 3rd of May, and the defendant put in his appearance to the amended bill on the 7th of the same month, but did not plead, answer, or demur thereto within eight days from the day of his appearance. On the 9th of May, the Lord Chancellor, in concurrence with the Master of the Rolls and the Vice Chancellor, in order to remedy difficulties which occurred in the practice of the Courts,<sup>a</sup> issued six orders to meet such difficulties.<sup>b</sup> The third of these orders directed "that in case an injunction to stay proceedings at law shall be prayed for by the bill, and either not be obtained, or having been obtained, shall have been dissolved upon the merits stated in the answer, and the plaintiff shall afterwards amend his bill, and the defendant shall not plead, answer, or demur to the amended bill within eight days after appearance, the plaintiff shall be entitled to move for an injunction upon affidavit of the truth of the amendments."

Mr. *Knight Bruce* and Mr. *Jacob*, on behalf of the plaintiffs, moved for an injunction on the 20th of June, under the above order, producing affidavits of the truth of the amendments which the plaintiffs made in the bill.

Mr. *Wigram* and Mr. *Hull*, *contrà*, insisted that the general order above stated was prospective, and could not have effect upon proceedings before the Court anterior to the date of the orders.

The Vice Chancellor concurred in that view of the order—it was in its very terms prospective. If he had thought, when the orders came to him from the Lord Chancellor and Master of the Rolls, that the words of this order could have been made to apply to any but future cases, he would have suggested an alteration to their Lordships. He should therefore refuse this motion with costs.

*Rawson v. Samuel.*—Sittings at Lincoln's Inn, June 20th, 1839.

##### PRACTICE.—DEFENDANT.—CONTEMPT.—PRO CONFESSO.

*Where a defendant, in contempt for not putting in his answer, is reported by the Master under the act 1 W. 4, c. 26, s. 15, to be unable from poverty to employ a solicitor, and declines to apply to the Court to assign him a solicitor to prepare his answer, the plaintiff is entitled to an order to take the bill pro confesso.*

Mr. *Bogshawe* moved that the defendant in this case be brought up from prison, to which he had been committed for contempt in not putting in his answer, and that the bill be taken *pro confesso* against him, without assigning him solicitor and counsel. A reference

<sup>a</sup> See *Ferrand v. Hamer*, 17 Leg. Obs. 201: and *Leicester v. Leicester*, *Id.* p. 490.

<sup>b</sup> See them, at the end of the first part of Mr. Beavan's Reports at the Rolls.

had been directed in a previous application to the Master under the act 1 W. 4, c. 36, s. 15, to ascertain whether the defendant was too poor to employ a solicitor to get his answer ready; and the Master reported that the defendant was unable from poverty to employ a solicitor. The defendant declined to make any application under the 6th rule of the said act and section, to assign him a solicitor for the purpose of putting in his answer.

The *Vice Chancellor* made the order as prayed, and said if a defendant, reported by the Master to be unable from poverty to employ a solicitor to prepare his answer, declined to apply to the Court to assign one to him for the purpose, the Court had no alternative but to make the order to take the bill *pro confesso* against him on the plaintiff's application. The plaintiff might, but ought not to be compelled to apply for an order to assign a solicitor to the defendant for the purpose.<sup>a</sup>

*Crooke v. Coop.*—Sittings at Lincoln's Inn, August 1st, 1839.

#### Queen's Bench Practice Court.

##### AWARD.—AGREEMENT OF REFERENCE.

*Where, by the agreement of reference, the arbitrator was directed to take a view, and that view was taken, it is no objection to the award that it is not set out.*

*James* moved for a rule *nisi* for setting aside the award made by the arbitrator in this cause, upon various grounds. The principal foundation for the application was, that by the agreement of reference it was determined that the arbitrator, at a certain period before making his award, should take a view of the premises in respect of which the claim arose against the defendants, and that this view having been taken, it was not set out in the award that such was the fact. It was submitted, therefore, that on the face of the award it appeared as if the arbitrator had not proceeded in pursuance of the powers conferred upon him.

*Coleridge, J.*—I think that this view being admitted to have been taken, there is no ground for disturbing the award upon this point.

*James* then contended that in respect to other matters the arbitrator had exceeded his authority, and a

Rule *nisi* was granted.—*Spence v. The Eastern Counties Railway Company*, T. T. 1889. Q. B. P. C.

##### EXAMINATION OF ARTICLED CLERK.

*An articulated clerk cannot be examined before the termination of his five years' service.*

*Bull* moved that the applicant, Mr. Bartlett, might go to be examined, with a view to his being admitted an attorney in Michaelmas Term next, before he had completed his five years' service. The applicant had been articulated on the 27th of May, 1834, to Mr. Craddock, with whom he remained up to the 27th of June following, when his master died. For the ensuing twenty days he was under the care of the chief clerk in the office, but without any

master, and he subsequently remained in the service of Mr. Mitchell, under a parol agreement until the 22d of July, when he was regularly assigned to him. He served the remaining period of five years with him, from which, however, the period from the 27th of June to the 22d of July must be deducted, because it could not be said that he was then serving under articles. The object of this motion was that he might undergo his examination immediately, although the full time of his service would not be completed until after the end of this Term, and unless the Court would relieve him he could not be examined until Michaelmas. *Ex parte Musterman*, 6 D. P. C. 156, was cited, where a doubt existed as to the validity of the service, and the applicant was ordered to be examined *de bene esse*.

*Coleridge, J.*—I think we must adhere to the general rule, which is that a clerk must complete his five years' service before he can be admitted to be examined.

Application refused.—*Ex parte Bartlett*, T. T. 1839. Q. B. P. C.

##### RE-SEALING WRIT.—DATE.

*When a defective writ is re-sealed it should be dated of the day of its being re-sealed.*

*Humfrey* had obtained a rule in this case for setting aside the writ of summons which had been issued, and all subsequent proceedings, on the ground of irregularity. The copy of the writ which had been first served upon the defendant was at the suit of William Wright, but on a summons which was taken out at the chambers the writ was set aside, on the ground that there was no precept to warrant its being issued, the former being at the suit of Knight, and the latter of Wright. On the 13th of May the writ was re-sealed, and on the next day a copy of it was served upon the defendant, the action then appearing to be at the suit of Knight.

*Petersdorff, contra*, contended that since the Uniformity of Process Act it was competent for the plaintiff to serve a copy of a re-sealed writ. In order to succeed in this application it must be contended that there was no power to amend process. *Durden v. Hammond*, 1 B. & C. 111, and *Leigh v. Leigh*, 4 D. P. C. 650, were both in point.

*Humfrey*, in support of the rule, urged that if the writ were re-sealed it must be dated of the day of its new issue. That was clear by the 12th section of the Uniformity of Process Act, which provided that all writs must bear date on the day of their issue. The most favourable construction which could be put upon this writ was that it was a new one, and therefore the proper date was not affixed to it. A tender had been made in this case after the first service had taken place, and the effect of a decision in favour of the plaintiff would be to avoid the effect of that tender.

*Coleridge, J.*, held that the writ must be considered as having issued when it was re-sealed; and it was therefore wrongly dated.

Rule absolute.—*Knight v. Warren*, T. T. 1839. Q. B. P. C.

<sup>a</sup> See *Wheeler v. Cotterell*, ante, p. 317.

### RESULT OF THE LAST SESSION OF PARLIAMENT.

WE have from time to time given a List of such Bills as, effecting any material alteration in the Law, have received the Royal Assent. The Session having closed on Tuesday last the 27th instant, it may be useful to repeat the whole List, including those of the present week. The acts marked thus \* have been already printed in the Legal Observer, and the rest will be speedily submitted to our readers, with such notes as may appear to be useful.

#### *Law Bills passed.*

- Seditious Societies.
- Purchasers' Protection.
- Designs Copyright Extension.
- Designs Copyright.
- Durham Court of Pleas.
- Exchequer of Pleas Inquisitions.
- Protection against Bankruptcy.
- Borough Courts.
- Indemnity Act.
- Bills of Exchange.
- Turnpike Acts continuance.
- Election Petition Trials.
- Postage Duties.
- Prisons.
- Stannary Courts.
- Custody of Infants.
- Imprisonment for Debt.
- Metropolis Police.
- Tithes Commutation.
- Sheriffs' Exemption.
- Real Estates Liability.
- Highways.
- Turnpikes.
- London City Police.
- Sixteen Small Debt Courts.

#### *24th August 1839.*

- Metropolitan Police Courts.
- Holding Assize Courts.
- Highway Rates.
- Patents for Inventions.
- Joint Stock Banks.
- Halifax, Huddersfield and Bradford Small Debt Courts.

#### *26th August.*

- Administration of Justice in Parts of Counties.
- Poor Law Commissioners continuance.
- Poor Rates Collection.
- Bastardy.

#### *27th August.*

- County and District Constables.

Thus far appears the result of the Session regarding the Law Bills which have been brought to maturity. The following is a statement of the fate of the rest of the measures which have made their appearance before parliament:—

- Bills *negatived*, or "slain in war:":
- Court of Admiralty. Small Tenelements
- Copyright. Clerks of the Peace.
- Copyholds. Qualification of Voters.

Bills *postponed* or dropped, or "sleeping killed:":

- Trial of Prisoners at Sessions.—Registration
- of Births.—County Courts.—Registration

Court of Appeal.—Turnpike Unions.—Several Small Debt Courts.—Inventions and Patterns.—Registration of Electors.—District Sessions. District Prisons.—Double and Treble Costs.—Summary Jurisdiction of Magistrates.—Sewers. Poor Rates.—Irish Attorneys.

Amongst the *projected* measures which have not been brought in, or which are *self-deposed*, we must lose no opportunity of recording that great "sin of omission"—the *Equity Reform Bill*—more needed than any other in the wide range of modern improvement. On this subject we would call the attention of our readers to the very judicious and excellent speech of Mr. Freshfield, for which we have gladly found space in our present number.

The following are the passages in the Queen's Speech which bear on the Administration of Justice: they relate only to the Criminal Law and Police.

"I have observed with much approbation the attention which you have bestowed upon the internal state and condition of the country. I entirely concur in the measures which you have framed for the preservation of order, the repression of crime, and the better administration of justice in this metropolis; and I have given a cordial assent to the Bills which you have presented to me for the establishment of a more efficient constabulary force in those towns which peculiarly required it, and for effecting the important objects of generally extending the civil power throughout the country."

"It is with great pain that I have found myself compelled to enforce the law against those who no longer conceal their design of resisting by force the lawful authorities, and of subverting the institutions of the country. The solemn proceedings of Courts of Justice, and the fearless Administration of the Law by all who are engaged in that duty, have checked the first attempts at insubordination; and I rely securely upon the good sense of my people and upon their attachment to the constitution, for the maintenance of law and order, which are as necessary for the protection of the poor, as for the welfare of the wealthier classes of the community."

### THE EDITOR'S LETTER BOX.

"A Barrister" states that in the reports of cases before Commissioners of Bankrupts in the newspapers he observes of late that one of the Commissioners is stiled "His Honor." This title belongs to the Master of the Rolls (when not a peer) and the Vice Chancellor, and as our correspondent says, to the Barons of the Exchequer.

"A hint for frugal Lawyers during the Vacation" has been received.

We should be quite willing to include all the lists and tables which have been suggested in the *Legal Almanac*, if the subscribers would allow the price to be increased; but "as at present advised," we shall make no alteration in the price, but improve the contents as much as practicable within the limits of the work.

# The Legal Observer.

MONTHLY RECORD FOR AUGUST, 1839.

—“Quod magis ad nos  
Pertinet, et nescire malum est, agitanus.”

HORAT.

## REMARKABLE TRIALS.

### CASE OF BOLAM FOR MURDER.

July, 1839.

We have in this part of our work given a long series of criminal trials of a remarkable kind, ancient and modern. The late trial at Newcastle seems to deserve a place in our collection. We shall first give the prisoner's own account of the transaction, extracted from the speech of his counsel; then the evidence of the medical witnesses; and lastly, the able summing up of the learned Judge, with the sentence. These will be sufficient for the professional reader.

The prisoner was the actuary of the Savings Bank at Newcastle, and he was indicted for the murder of one Millie, a clerk in the bank. The prisoner's statement of the transaction was this:—

He said that Millie had left the bank for the purpose of going home to tea, and that he himself had then gone home in consequence of a threat held out in an anonymous letter, for the purpose of ordering the shutters to be closed as a matter of safeguard, adding, that he had not mentioned the circumstances of the threat contained in the letter to his house-keeper, fearing he might create a feeling of alarm in her mind. Then he said that he had gone back to the bank about seven o'clock, and on his arrival there, instead of finding as he anticipated, the door open, he had discovered that both the doors were shut; that he thereupon let himself in with his own key, which he chanced to have in his pocket at the time; and when questioned on the subject, he had further stated that he was not surprised at finding the doors closed, because Millie sometimes was in the habit of locking himself in when he was busy. After this, the prisoner stated he was in the act

of doing that which was his custom, of going straight up to the table for the purpose of taking off his plaid, when he saw Millie lying as he thought asleep, and that as he was commencing to take off his plaid, he was assailed by the man who in his opinion was the murderer of Millie; that he instantly turned his head round and saw a man with his face blackened, and his dress disguised, and then ran towards the window, calling out “Murder!” That the man followed and knocked him down, and struck him severely several times, and eventually lifted up his head and cut his throat. He also said, he made no resistance, in consequence of finding, after what the man had said, that it would be of no use. With respect to the cuts which appeared in the back of his coat, the prisoner was totally unable to give any account; for when he felt the man cutting his throat, his senses left him; and a most fortunate thing it was that such had been the case, for the assassin had left his body under the impression that he had killed him. In this state of unconsciousness the prisoner had remained from seven o'clock on that evening until two o'clock the next morning.

The medical evidence was as follows:—

Mr. Glenton.—I keep a druggist's shop. I practise medicine and surgery. I was sent for to the bank. I got there about half-past two o'clock. I first saw Millie. My attention was drawn to the person of Bolam. I found him raised on a table, exposed to an open window, and persons trying to restore him. He seemed in a very exhausted state, with a very feeble pulse, and was almost immediately removed to my house. His pulse was feeble, skin pale, and hands cold. He was laid on my kitchen table. I applied stimulants to restore him. In about half an hour he seemed to revive, and his pulse improved. He did not speak so soon: I think it was half an hour before he shewed consciousness. I thought the pupil of the eye not very sensible to light. The approach to consciousness was gradual. He was revived in some degree by his passage through the open air. It was something less than

an hour before he spoke. He spoke in a feeble manner. He gave a narrative. I heard the account given. I examined his throat. There was a wound an inch and a half in length on the left side of the neck, a quarter of an inch below the jaw. It was merely through the true skin, and of no consequence. I examined his sides next morning: I found some straight up and down scratches, and slight abrasion. There was a group of scratches. I think they were inflicted by some sharp instrument. I have since seen a person who fell on some sharp rocks, which produced a similar appearance. There were cuts in his coat, through waistcoat, shirt, and flannel shirt, on the right side, through to the skin. There were four or five in the coat. There were two about a quarter of an inch in length through the shirt. I examined them, and thought the cuts in the shirt corresponded with those in the coat. I don't know that all the cuts were through—I think not. There were two blackened surfaces on the back, as if inflicted by a blunt instrument. There was a little blood on the left hand wristband of the shirt.

Cross examination.—A person who had receive a blow on the right temple might lie for a considerable time, and be found in the situation in which I found the prisoner. He might have been insensible, and partially recover, and fall into insensibility again, or be brought into a new state of insensibility by the influence of smoke. When thus coming and going I think it possible he might have a partial sense of passing things. I had no doubt that he was in a state of real insensibility when I saw him. I think he could not put it on. He could not sham a feeble pulse, or paleness, or cold. His hands did not appear to have been recently washed, but they were free from blood; they were partially soiled, a little dirty as a man about his daily avocations. I thought the blood had flowed from the neck upon the breast of his shirt. I looked at his coat the following morning; I found some cuts. There was some spots of blood on the waistcoat. I am not certain about the coat. Those I saw on the waistcoat might have been done from the blood of the throat; altogether they might cover the size of a shilling. I examined the trousers at the inquest on the Thursday following. I think there were some small spots at the lower part. I have often known insensibility follow from blows which left no external mark, and continue for several days.

Re-examined.—I never knew it from a blow on the temple: I have from a blow on the back of the head.

Mr. Baron *Maule* said he thought there was a case of manslaughter in which that was the case.

Re-examination continued.—It has never come within my province to observe a case produce those effects which was not struck on the head. Bolam did not complain of his head that I remember. I heard him say he had been knocked down. I think that drew attention in the first instance. A friend of mine, Mr. Mackrich, saw a mark on the right temple. I observed it. I don't know if others examined it. Mr. Neetham (the surgeon),

Mr. Walker, and some others, were there and heard it. When I took the handkerchief from his neck the blood was oozing from the wound. The blood might have flowed from over the stock upon the trousers. My house is fifty or sixty yards from the bank. He could be removed in about a minute. These drippings of blood might have taken place three or four hours before. If he had lain on his face all the time, I think the blood on the trousers could not have come that way. From his account I should have expected more blood to have been found on his hands, or spread more about his person.

Mr. *Beard*.—I am senior surgeon to the infirmary. The Friday after the murder I was called in to see the body of Millie; it was lying on the hearth-rug. The body was very much disfigured. There was a great cut over the right orbit, and a portion of the skull, and higher up a wound by which the skull was broken in as an egg is by breaking it. On the left side was an extensive wound. I could pass my hand into it. It would have killed any one instantly. The effect of a blow on the face was very evident. A poker in the hands of a strong person would be sufficient to produce the injury. I have seen the poker from the bank. I think that would be sufficient in the hand of a strong man. From the appearance of the left hand I think it received injury before death, in defending himself. On Saturday the 8th of December, I saw the prisoner at the gaol. I examined his person. I observed a wound on the left of his neck, running parallel with the base of the jaw, made with some sharp-cutting instrument. It was three inches and a half long, merely skin deep. I thought at the time it was not intended to do a serious injury; if it had been, the cut would have been more irregular, and deeper. I found scratches of the cuticle on the right side. They were parallel, all in the same direction. They might be done by the point of a penknife. I observed no abrasion. I think it could hardly have been done by one blow of the knife. I think it would require many motions of the knife. There were three, or perhaps four scratches, if he had been struck by a sharp instrument, the effect would depend upon what it had to go through. If it had to go through much, the point might terminate at the skin and produce scratches. I compared the cuts on the clothes, and my impression was that the cuts were given with the clothes off. They correspond with an opening in the flannel-shirt, which appears to be a jagged mark. I can hardly say what instrument it was done with. It does not appear that any blood came from the scratches upon the clothes. The scratches were such as blood would come from. There were many cuts in the coat, without any corresponding wound in the body. I saw no marks on the skin to correspond with the cuts in the back of the coat. There were corresponding cuts in the waistcoat. I also examined the shirt. The cut in the neck would account for all the blood I saw on it. I conceive it would not have flown as it has done if he had

lain horizontally. I examined the neck of the shirt. I found cuts in it which were not given with the cut in the neck. I examined the head of the prisoner. I could find no evidence of a blow there. It was about one or two o'clock on the Saturday. I examined the head. He pointed out places where he said he had received blows. I told him I found no appearance of blows there. I saw his shoes several days afterwards. There were one or two distinct marks of blood. I examined his gaiters at the same time; there were some drops of blood on them. There were some spots on the trowsers, below the knee, I think.

Mr. William Nesham.—I am a surgeon in Newcastle. I have practised nearly eighteen years. I went to the arcade, hearing there was a fire. I saw Bolam in Glenton's kitchen. Mr. Hawthorn, Mr. Walker, and Mr. Heath, all medical men, were there. He was lying on the table on his back. I felt his pulse almost immediately; I think it was about eighty. It was rather weak, throbbing, and irregular. It was a few minutes, probably a quarter, after two in the morning that I went. The state of his eye was natural. I should not have expected such a pulse in a person who had received a concussion of the brain. It was such as I think might be caused by being exposed to an unwholesome atmosphere. The prisoner put his hand to his neck, and was apparently concerned about it. I said he need not be under any apprehension about it, for it was of a very slight character. He put his right hand to his head and looked at me very anxiously in the face, as if he was hurt there. I considered that he was perfectly conscious then. He was not in the condition of a man who had been insensible six or seven hours from a concussion of the brain. I examined his head all over carefully. I was not able to detect any sign of injury of the head. If death takes place immediately upon the receipt of a blow, there would be no swelling or discolouration to any extent. I think there must be some, but if the person survived, it would be highly improbable that there should be no mark. Possibly, it might be. I have not known such a case. I can't say I have seen any case of a blow on the temple produce insensibility for several hours; I cannot therefore speak from experience. I should expect in such a case to find injury. I did not think him in any danger. If he had been insensible, I thought it had been produced by smoke. I saw the wound in his neck, and the blood on his shirt. I did not examine his hands. I observed him take up his right hand and look at it. There was no blood upon them that I observed. He simply put his hand up, turned it round, and put it down again. It appeared to be hastily done. In cases of concussion the symptoms, on first recovering are a general state of reaction. The pulse begins to improve in character. The intellect improves, and the man begins to recover. Symptoms of inflammatory fever generally occur if the concussion has been of a severe character. If the concussion be not severe, a general improvement gradually follows.

By the JUDGE.—The meaning of what I stated, that a blow would produce a mark in such a case, is, that the nervous system would receive such a shock as to produce a mark. Insensibility might be produced by a concussion or compression of the brain. There must be one or the other. If the insensibility was short, there might be no mark. I have heard of concussion of the brain without any external mark.

Mr. James Walker.—I am a surgeon to the police force in Newcastle. I was at Mr. Glenton's with the other surgeons. I asked the prisoner if he felt pain of his head, and put his hand to the right side. I discovered no mark of injury. If he had been insensible for several hours by a blow on the temple, I should expect to find a mark. I have seen several cases; I have seen it invariably produce marks; I can mention two cases. I have known blows on other parts of the head with such effects producing marks. Insensibility arises from concussion. Fainting may arise from other causes. When a person has fainted away he is insensible. A temporary suspension of the action of the heart produces fainting. A blow produces insensibility from concussion of the brain. In this case I should have expected marks upon the head. He was nearly recovered when I saw him. I was not acquainted with him before. He was quite collected in mind, and I think physically, as far as I could judge. His pulse was feeble, and there was a slight degree of coldness over the body. I felt his hands, to ascertain if he was warm or not. My impression was that he was recovering from suffocation, arising from congestion of the lungs, which smoke might produce.

Mr. Heath.—I am a surgeon in Newcastle. I went to see the prisoner in Mr. Glenton's kitchen. His body was perfectly motionless. His eyes and mouth were opening and shutting, and his throat moving up and down. I was puzzled. I was there only a short time. I afterwards saw him at the gaol. I saw the scratches on his side, and his clothes put upon him. They might have been done with passing a sharp instrument through a hole in the clothes previously made. I think they could not have been done at the same time. I saw marks on the sleeve and lining of his coat. I thought it was blood and water; that blood and water being used, the stain had gone through. I observed that the wound in the neck was nearly healed when I saw it.

Cross-examined.—I saw it on the 13th, there was a slight scab over it then. The marks in the lining of the coat are not so apparent now.

Mr. Baron MAULE, addressing the jury, stated the nature of the indictment. The questions are, whether J. Millie came to his death as therein described; then whether the prisoner at the bar was the person who caused that death. If you think so, then you will consider whether it was under such circumstances as amounts to murder. Murder is the feloniously taking away the life of another without such provocation as would reduce it to manslaughter.



ter. This is a grave charge. The prisoner has received a most excellent character to that time. It is a case requiring the most serious consideration, and I concur with the counsel, that you must rely upon the evidence in the case, and dismiss from your minds all prejudice which the circumstances have excited through the country. You heard the statement of the circumstances which were relied upon by the counsel for the prosecution, some of which have not been proved; and it constantly happens that arguments are used, and conclusions drawn, which are not established by the evidence. There were two or three other circumstances of that kind which I should caution you against. One is that which seemed to be one of the strongest circumstances in the case against the prisoner—namely, that which took place in the house of Mr. Glenton. It was stated as if the prisoner intended to escape. It turns out that he was seeking the breakfast-room, and there was no suspicion that he intended to leave the house. How that view was taken by the prosecution I cannot say, except that, having assumed that the prisoner was guilty, they considered this to be a proof of their assumption. Another instance is, that about seven o'clock he was seen walking quick in an evening of December. It shows that the minds of these engaged in the prosecution were ready to import anything into the case. No doubt they intended rightly, but your and my business is to insist on sifting the truth. Another instance is that of what Bolam said of the state of the candles was much relied on, but of which not one word of proof was given. No doubt the cries that the parent of motherless children had been murdered in a most barbarous manner tended to excite feelings of humanity towards them, and feelings against the perpetrator of so foul a deed; but we must be upon our guard against those things, and it is my most earnest desire that you should guard against being influenced by them. One would wish that the perpetrator of so barbarous a deed should be brought to justice; yet there is a duty, on the other hand. Much as it would be to be lamented that the guilty should escape, it would be much more lamentable if the innocent were to suffer in his stead. There is a great length of evidence gone into, yet the facts are not numerous, many of the same facts having been repeated by different witnesses. It will be for me to direct your attention to the facts, and then for you to find your verdict on these facts, regardless of all consequences one way or the other. It appears that the prisoner had been employed for fifteen or sixteen years at the bank, where he had uniformly conducted himself with integrity. Bolam appears to have been unfriendly with Millie's predecessor, and to have exerted himself to procure Millie a permanent situation to provide a maintenance for his family, and to have on various occasions shewed acts of kindness to Millie and his family. On the 4th of December he takes Millie and an old servant of the bank to his house, and takes a kind and cordial way of congratulating him

on his appointment. Nothing appears respecting Wednesday. On Thursday they are in their places, and are seen by M'Cree at a quarter past three on Thursday. They were sitting together like brothers, not upon terms of mere good will, but of substantial friendship. The next thing is that the prisoner was seen between six and seven o'clock in the evening, coming towards the savings-bank from his own house. He is said to have come a little round. It is quite unreasonable that a man should be found guilty on that ground. He is not seen after that for a long time, and witnesses are called to show that the door in the Arcade, which was a common door to the bank and other places up those stairs, was shut about half-past eleven. Nothing is seen about the bank until about half past one, when Mrs. Latimer saw a faint light in the window. None of the police seem to think the fire was lighted earlier than that time. The probability is, I think, that the fire was lighted late, than that it was mouldering for hours. A person intending to do it would do it effectually if he could. The first person who came was Armstrong, who came before the fireman. He found the door of the lobby then open. Somebody then, had opened between half-past eleven and half-past one o'clock. The fire then burst out; the water was soon poured in. The first person, as far as we know, who got in, was Appleton. I think it is not safe to draw any inference from the resistance he found at the door. I rather ascribe that and many other things to the feeling in the case, not blameable in itself, but which was applied to an opinion already formed by those who brought the prosecution forward. Appleton goes in, either before or after Armstrong; they find the body apparently laid out, and then you hear the description. There seems no doubt of the cause of the death. The medical evidence given is in that scientific style which is really inconvenient. For instance, one laid hold of Bolam's hand to "see if the circulation was in a course of restoration to the superficies," which in plain English means whether he was warm or cold. There may be a little difference between the description of the witnesses of the manner in which Bolam was when found, but they are only such differences as one may expect on such occasions. The inference is, that if you descend to the extreme minutiae of evidence, you will probably be led to a mistake. He was lying on the ground in a room considerably filled with smoke, otherwise dark, and a horn lantern is held to his face, and one witness thought the eye was intelligent. Why, how can that be safely depended upon? Now, Alderman Dunn felt his pulse, and said there was life, clearly showing that it was not a strong pulse. Then he thought the prisoner drank, because he did not see the water run out of the basin, and from that infers that some water necessarily went down his mouth, showing how inferences are incautiously drawn. Now, Mr. Glenton felt his pulse as a medical man. He speaks to the facts, and tells you a man cannot sham a feeble pulse, or a pale skin, or a cold surface.

Medical practitioners are called after who thought the prisoner was recovering from fainting produced by smoke. Why, fainting is insensibility. None of them objected to Glenton as a medical man. He has been in practice above twenty-five years. He admits that he had not had a college education. I don't think there was any college for the education of surgeons at that time, but only for examination of candidates. But surely a man in twenty-five years may acquire some knowledge of his profession; and when he says he found a bruise, is he to be discredited because other persons said they did not find it? I think you ought to believe that the prisoner was in the state as described by Mr. Glenton, when he saw him at first. At the time, none of the medical men suggested that the prisoner was making believe. They say they ascribe it to suffocation, but they admit that he was fainting. Much has been said about the blows making him insensible. Now, Bolam never said that the blows made him insensible. He says it was after his throat was cut he became insensible. It seems from the shirt that half a pint of blood must have come from his throat. With respect to the marks on the body, which they term scratches, I thought they were something like what a thorn would produce, but they turn out to be cuts, from which much blood might come. There is a remarkable circumstance that there are several cuts in the back of his coat with no corresponding cuts on his person. When the prisoner made his statement it was not taken in writing. It does not appear that he ever made a full statement. He was questioned and tells something; then is asked more, but whether he ever gave a full and deliberate statement, or what it was if he made one, you have no information. He made one before the coroner. His counsel was right in objecting to it, and it was not pressed. I think it fair to the prisoner to say that it would be unfair in us to bind him to every word of what he said, still less of what he is assumed to have said. But he ought to have been bound by the substance of what he said; and if he made a false statement, it may be thought there was a motive to conceal the truth. Alderman Dunn says, the prisoner told him "There has somebody been moving in the bank all night." Now it is extraordinary, if not true, that on first reviving from fainting he should begin with that statement? The prisoner said Millie went out to tea. If he was the murderer, he must have known that to be false. He says he went home to warn his housekeeper, but did not tell her the ground of his alarm. This was dwelt on by the prosecutor. I should say it was a likely thing for a man to do not to alarm her, so as to make her afraid to remain in the house. He told her he came for a key by way of excuse. With respect to his going home, there is no proof that he did not. His housekeeper was called, but was never asked the question. You cannot therefore assume that story to be false; for if it was false they might have proved it so. He says he returned to the bank about seven o'clock. That is proved, at any rate,

that he was on the way to it. He says the bank door was locked, and he opened it and went in, and found Millie on the rug, and thought him asleep. He was not surprised that he found the door locked. This was a season of the year when they were kept longer than the usual hours of business, and it appears to me reasonable that one alone in the bank should lock himself in. (The Judge then recapitulated the other parts of the prisoner's statement.) It appears to me to be dangerous to draw an inference from the conduct of what a man would or would not do: persons' lives have been saved by their not resisting. He remains in a state of wavering insensibility. A great deal was said about the anonymous letters. He mentioned Armstrong, who appeared to concede it, and he mentioned Bulman. If nothing of the kind had occurred, it would have been suspicious, but Armstrong does not contradict him, and Bulman only says he cannot recollect it; and it is shown that a particular letter named by the prisoner was written and was shown. Mr. Blackwell gives an account of the prisoner's statement. He adds the fact that he raised his hand and looked at his fingers. That is put as a suspicious circumstance. But are we to say in what cases a man may look at his hand without suspicion? The description to Blackwell is not in the same words as that given to Alderman Dunn, but they are equivalent words, and the substance is the same. When he spoke of the letters, he looked at Armstrong and said, "You know of one of them," and Blackwell understood Armstrong to accede to it. And he did see the letter written by the female whose name could not be found. A point is made of that being called an anonymous letter. I think it may be called such in common language, and furnishes no ground of suspicion against the prisoner. The expression that the candles were burnt in the socket is relied upon. Now, the question put to the prisoner was, how much light there was; and what was there to call his attention particularly to the socket; the subject was the dimness of light; and another witness gave the account in words consistent with the fact as the candles were found. Are we to hold him to a word? This was a night of horror, at any rate; and if the substance of the question was consistently answered, we ought not to draw unfavourable inferences from that. The state of the shutters and windows are important. Those next the Manorchase were loose; those in the waiting room open, as Mrs. Latimer saw. It was also said Millie's key was in the door. Now, it is not quite certain that we know the first person who got in. A large quantity of blood is found, and blood at the place the chairs are piled over. The blood on the door looks as if the poor man had tried to get out of the door after he was wounded. The fact that the injury was inflicted with an instrument found there is pretty certain, from which it may be inferred that the person who came in did not bring instruments of death with him. Millie's key being in the door would be consistent with some person, whom the prisoner is not, coming to the door,

and inducing Millie to open it. The prisoner says that he opened the door with his own key. If Millie's key was then in the lock, and the lock was of an ordinary construction, that could not be. If, therefore, he did use his own key, Millie's key could not be in the door. How, then, did it come there? But the manner in which the witnesses state it, leave no reason to doubt there was a mistake of some kind in the manner in which he let himself in. The safes were found open, the wooden doors burnt away, and the iron door shut. Now the lobby door, which Robson shut at half-past eleven, was open at twenty minutes to two. Now, it must have been opened by some one between those times. By whom? It is suggested by the counsel for the prisoner that it was done by the assassin. Could the prisoner open it? He may have opened it, and afterwards cut his own throat; but considering the state in which he was found he could hardly have done it. If, then, it was done by some other person, that is a circumstance strongly in favor of the prisoner, and of the presumption that that person was the guilty man. These are circumstances which confirm such a view of the case. The prosecutor's case is, that about half-past seven o'clock the prisoner deliberately murdered Millie, and then went back to his house and broke a pane of glass to get in; that he made the cuts in the back of the coat, without corresponding cuts on the person; that he cut holes in his coat, with no cuts in the flesh to correspond with them; that he cut his throat, letting out half-a-pint of blood, and giving himself a knock on the temple to conceal the murder. Now, is it likely that to conceal it he would make feigned cuts in his coat—the same person who cuts his own throat? There are great difficulties in the case for the prosecution, but there are also difficulties in that of the defence. It is a great question whether the fire was lighted to consume the body that it should not be discovered. There is no doubt that the prisoner was found in such a state that if he had remained a few minutes longer he would not have been here. It might be that a person having committed such a crime would be inclined to commit suicide, but that does not agree with so slight a cut in the throat. There are two other ways of treating the case. The prisoner may be guilty of the death of Millie under other circumstances. Some difference or altercation may have taken place between them. The evidence goes to shew that there was no ill-will or malice; but among a thousand causes some spark of anger may have been kindled and blown up; a scuffle may have ensued, and the man at the bar may, in a state of excitement, have been the death of the deceased; and if he were so, and blows passed between them in conflict, he would have been guilty of manslaughter, and that would furnish motives enough for a statement which would, in his opinion, screen him from banishment from his native country and his friends. The holes in the coat might have been made in a scuffle. This view furnishes motives quite sufficient for the fire as well as for the other facts. I don't say that is the inference you ought to

draw, nor has it been suggested on either side; it is for you to consider it. Again, you may hold, looking at all the inferences on both sides, that you are not satisfied how the matter really was—that it is still a mysterious case—that the facts are insufficient to shew that the prisoner is guilty beyond all reasonable doubt; you will in that case give him the benefit of that doubt. On the whole, you will say, first, whether you think there is sufficient to shew that the prisoner did it at all; secondly, whether, if done by him, it was done with malice aforethought; thirdly, whether, if done by him, it was done under such circumstances as would reduce it to less than murder. The prisoner had received a good character, which shows that he was an unlikely person to do it at all; and whether you think the case is involved in so much mystery as to leave you to doubt or not, you will give him the benefit of that character.

The jury retired to consider their verdict. After an absence of about three hours, the jury returned into Court with a verdict of "Manslaughter."

On a subsequent day, the prisoner was placed at the bar to receive the sentence of the Court. The officer of the Court addressed him as follows:—

"Archibald Bolam, you stand convicted of the manslaughter of Joseph Millie. What have you to say why the Court should not give judgment?"

The *Prisoner* in a firm and deliberate voice replied, "My Lord, I solemnly declare before God and before your Lordship, that I am wholly innocent of the death of Joseph Millie."

The *Judge*.—Archibald Bolam, you have been found guilty by the jury, after a full inquiry and a careful consideration of all the evidence, of the manslaughter of the unfortunate deceased. The jury by their verdict have expressed their conviction that you were the cause of his death, and, having that conviction, they have found the mildest verdict they could consistently with it. They must have been convinced that you did it upon some provocation. You say you are innocent. (*Prisoner*.—"I do, my Lord.") I see no reason to be dissatisfied with the verdict. Probably if the alternative of manslaughter had not been suggested to their minds, as they were convinced that you caused the death, they would have found you guilty of murder. I will not pain you by detaining you long. I will only add, that there must have been some strange and unaccountable excitement in your mind at the time you perpetrated the horrible deed; and had the jury not come to that conclusion, they must have found that it was done by malice. Now the offence of manslaughter has been found out, it appears to have been of the most violent and shocking description. I feel bound, therefore, to pass upon you the severest sentence which the law allows for that crime. The sentence of the Court is, "that you be transported beyond the seas for the term of your natural life."

The *Prisoner*.—"My Lord, I regard that sentence as my death."

DEBATES IN PARLIAMENT RELATING TO THE LAW.

COURTS OF EQUITY.

*House of Commons, 16th July 1839.*

Mr. *Freshfield*.—Sir, in submitting to the House a motion for certain returns relating to the Court of Exchequer, my object will be to shew the present situation of the Court of Chancery, or, rather of the suitors in that Court; the urgent necessity of some immediate relief; the effectual assistance which might be afforded to those suitors, by rendering the Court of Equity in the Exchequer an efficient Court; to point out the injurious effect upon that Court of various legislative measures during the last twenty years; and to suggest a remedy for the evils now existing.

Sir, I am deeply impressed with the importance of the subject, and painfully conscious of my inability to command the attention of the House; and I shall therefore, more briefly and abruptly, perhaps, than is consistent with the interest of the public, enter upon the consideration of this great question. Honorable members are, no doubt, aware, that it appears by a return recently made, that there are now 712 causes waiting for a hearing before the Lord Chancellor and the Master of the Rolls; and when a hearing is spoken of with reference to the Court of Chancery, it must be borne in mind, that probably years of delay have taken place in many of those causes before they have arrived at that important stage. Without dwelling, however upon that previous source of anxiety and expense, there are now 712 causes ready for hearing, and in arrear. It has been stated by the present Lord Chancellor, in his place in parliament, that if no one new cause should be set down for a hearing during the next three years, it would require the whole of that period to clear off such arrear; in other words, for a period of three years the doors of the Court of Chancery are as effectually closed against the suitors, whose causes are not included in that 712, as if no such tribunal existed.

This would be described as a crying evil, because it amounts to a denial of justice; but, in my opinion, the delay of justice;—such delay as the Court of Chancery exhibits is practically a greater grievance than the positive denial of all relief; and to live under an absolute Monarch,—whose will is the law and who has and exercises the power of protecting a favourite from the liability to do justice to his creditor,—is far more tolerable than nominally to enjoy the benefits of a free constitution and equal laws, and yet, as the consequence of delay, to be subject to the distracting alternations of hope and disappointment, creating present misery and probable ruin. In the one case, the necessity may appear hard, and the measure arbitrary and unjust; but it is positive and unequivocal, and must be borne; and though the claimant does not get his right, he loses nothing in the pursuit of it. Not so the

unhappy victim of delay. I might illustrate the hardship of his case by many instances; I will, however, trouble the House but with two.

In one case a gentleman of retired habits and great attainments, with an easy competency, had the strongest reason to believe he was intitled to a property of £30,000 per annum, which was enjoyed by another,—and was, in fact, the support of a peerage. To the claimant any accession was indifferent; but he had an only son whose interests he felt himself bound to promote,—and he therefore instituted legal proceedings. It could not be expected of his opponent that he would facilitate those proceedings; and the claimant encountered all those delays and difficulties which such a stake was likely to provoke. Without describing these delays in detail, it is sufficient for the present purpose to state, that, after reducing his income to three-fourths of its former amount, he felt that the duty he owed to a wife in delicate health, and to his son, then in a course of education, required that he should desist from further proceeding,—having already placed his claim in a state to be pursued by his son, if he should be so inclined, at any future period. Now, upon the facts of this case I assert the delay, and the expence consequent upon delay, for it is one of the grievances of the suitor, that, while relief is dormant, expense is ever on the alert; those causes, and those alone, prevented this claimant from pursuing his right; and I adduce two facts in confirmation of that assertion. In the first place, his opponent—the last person to think favourably of an assailant—was so far from deeming his proceeding frivolous or vexatious, that immediately upon his desisting to proceed, although he waived no right on the part of his son, presented him with a full service of plate in testimony of his honorable conduct. And in the next place, to shew that it was not an imaginary claim, I will state the names of the counsel who gave clear, unequivocal, written opinions in favor of the claimant's right,—They were,—1. Sir Arthur Pigott; 2. Sir Samuel Romilly; 3. Sir Vicary Gibbs, (Attorney General); 4. Mr. Serjeant Shepherd (afterwards Lord Chief Baron of Scotland); 5. Mr. Serjt. Williams (an eminent real property lawyer); 6. Mr. Charles Butler; 7. Mr. Preston; 8. Mr. Mayne, (afterwards Judge Mayne); and, 9. Mr. Abraham Moore, of the Western Circuit.

Sir, I will pass on to another case. It relates to the property of a merchant who died in 1803, leaving that property in the possession of his partner. His only child, a daughter, being abroad, the proceedings in Chancery to recover her right, were not instituted until 1809. Her opponent had nothing to gain by expedition, and, of course, the forms of the Court were maintained on his part; still, however, no exertion was spared on her behalf, to prevent delay as far as might be possible; and in March 1812, she obtained a decree, establishing her rights. But the House must not suppose that a decree in Chancery is like a judgment at common law,—a proceeding at once ascertain-

ing the right and the amount to be recovered. So far from it, the decree is often the beginning of sorrow,—it is the stage to which the party has for years looked with hope and anxiety; and, when obtained, is little more than an authority to a master of the Court to take the account. So it was in the case under consideration: the claimant was entitled to recover, but how much, was the question; and that question was investigated with all the dilatory forms belonging to a master's office; and it was only in the year 1817, after a delay of five years, that the master reported a sum of 62,600*l.* was due to the claimant. That report was objected to by the accounting party; and after a further delay of fourteen months, occasioned by that proceeding, in 1818, the report was referred for revision unto another master, the gentleman who had made the first examination having died. The second master applied to the subject the most laudable industry, and the fullest share of talent; but he was bound by the forms of his office, and the defendant availed himself of those forms, and thus another period of five years was consumed. The second report was not made till 1823, and by that report, the sum declared to be due was not, as upon the first report, 62,000*l.*, but 36,000*l.*; that report was objected to, as not proceeding upon the principle of the decree, but being rather in the nature of an award upon what were conceived by the master to be the just rights of the parties.

I must, for a moment, interrupt the statement of the investigation in the Court, to apprise the House that the delay and expence of that investigation were not the only source of annoyance to which the plaintiff had been subject; on the contrary, while the proceedings were going on before two successive masters, the very decree upon which that investigation proceeded had been questioned, first, by appeal to the Lord Chancellor; and his judgment being in confirmation of that of Sir William Grant, the Master of the Rolls; the judgment of the Chancellor was appealed from to the House of Lords, and it was not until 1825 that the Lords decided against the appeal; so that for more than thirteen years the details were under consideration and in a course of litigation; and for the same long period it was treated as a doubt whether the very foundation of that investigation, namely, the decree, could be supported.

But to return to the question of accounts. In 1827, the Lord Chancellor thought there was sufficient doubt whether the principle of the decree had been followed in taking the account, to induce him to refer the second report back to the master for revision; but his lordship, collecting from the defendant's statement, that upon his own shewing, there was a sum of at least 18,500*l.* due, and with a view of taking from him one strong motive to delay, he directed, as a condition for the permission to have the report revised, that the defendant should pay that sum into Court, to abide the further decision of the Court. In 1828, Lord Eldon being no longer Chancellor,

an application was made to Lord Lyndhurst, his successor, to rescind that part of Lord Eldon's decision which directed the deposit of 18,500*l.*; and, after argument, his lordship was of opinion, that according to the rules of Court that direction could not be sustained, and he decided accordingly; the effect of which was to send the report for a third investigation, with every inducement on the part of the defendant to consume another period of at least five years in the new inquiry; and, as the Master, whose report was to be revised, obtained preferment about two years after Lord Lyndhurst's decision, the farther investigation would have taken place before a third Master, wholly unacquainted with the previous proceedings, and the arguments by which they had been maintained by each party, according to their opposite views and interests.

In the end, after two or three years of pause, connected with severe disappointment and vexation, the party,—who would be called the successful party, who had established her right, and after long investigations had obtained reports in her favor, though differing in amount,—and who, upon the least favorable, was found intitled to the large amount of £30,000,—still, such was the effect of the harassing delay and accumulation of expence, that she,—this successful party, abandoned the further prosecution of her suit, and the large demand which morally and almost technically she had established; and it is a circumstance confirmatory of my view, that the defendant (the other party to the suit,) having been compelled, in certain interlocutory stages of the cause, to pay two considerable sums, which he contended exceeded the amount to which the opponent was intitled, yet had not the courage to compel that opponent to proceed to a legal conclusion of the suit, although he is understood to have expended more than £5000 in law charges in his defence; and I submit that his acquiescence in that cessation of hostilities, if it did not amount to an admission, to some extent, in favor of his opponent's right, still proved that he, too, was weary of the delay, which was at the same time so distressing and so costly.

I might multiply cases, to shew consequences flowing from the delays of the Court of Chancery, which would deeply affect every feeling mind; but my object is to address myself not to the feelings, but to the judgment. I have, therefore, selected cases which are not of an extreme character,—they are cases between affluent parties,—who had ample means to defend and maintain their rights; but even for such parties, the consequences of delay were too serious to be longer endured; and by delay, in my opinion, justice was defeated. But let honorable members consider, for a moment, what would have been the situation of litigant parties in less affluent circumstances,—one seeking to recover, the other to resist, a very large demand;—the delay would not be the less because the means of warfare were not so great; but, on the contrary, and during the long period of suspense, the station in life of

every member of the claimant's family would be uncertain. The education of his children must depend, in great measure, upon the result of his legal proceedings. Those children would attain to affluence or remain in circumstances bordering upon indigence. The situation of the opposite party would differ only in this,—that he would possess the property which his adversary sought to recover; but, if such a person deserved the character of an honest man, he would hesitate to spend that which was claimed by another; and, at least, his family must be materially inconvenienced by a long uncertainty respecting their pecuniary circumstances. It must also be recollected, that not only does the problem of success or failure directly affect the situation of the claimant's family during the long period of suspense, but he must find the means of carrying on his suit. The expence, I have already shewn, is considerable, though the progress be small; and how frequently has it happened that the unhappy claimant has expended all his own means; has been compelled to stay his proceedings until he could raise funds by way of loan; these being exhausted, another pause, perhaps of years, has taken place,—and after several repetitions of loans raised with difficulty, and of hopes of a decision of his suit disappointed, the party is found a prisoner for debt, at the suit of individuals from whom those loans were obtained! Thus does delay aggravate the evil, and involve the man of small pecuniary means in positive ruin.

The effect of delay, such as the every day experience of the Court of Chancery exhibits, must be grievous, even in the instance of affluent parties; and to parties differently circumstanced it must be ruinous. Then, let me ask, can such a state of things be allowed to exist? Does it exhibit a serious grievance, and shall no remedy be attempted? Do not let it be supposed that, directly or indirectly, I prefer the slightest complaint against the learned, able, and revered functionaries of that Court: they do all that conscientious judges can effect, and more than the public have a right to expect;—but I complain partly of the system, and more of the inadequacy of the judicial power, when compared with the increased extent of the business to be transacted; and I may add, that not only is the general business of the Court enormously increased by the great accumulation of personal property, and the questions incident to the disposition of such property, but the procrastination to which the state of the Court of Chancery leads, has, in itself a re-acting effect, and adds to the amount of business,—because, as was well said in another place, though *bond fide* litigation is discouraged, yet *mala fide* litigation is encouraged; the wrong doer is described as sitting in tranquillity and triumph; he may safely resist the most just demand; the probability of any decision must be very remote; nay, more, if he be wealthy, he may set up the most unreasonable claim; he may oppress his poorer neighbour:—he has the double chance, first, of that opponent being ruined in his en-

deavour to defend himself; secondly, though not ruined, that he will not live long enough to witness the dismissal of the claim.

At this moment, the money belonging to suitors in the Court of Chancery, and invested in the name of the Accountant General of that Court, amounts to about 40,000,000*l*. How much of that belonged of right and in justice to parties who, in despair, abandoned all hope of following their claims to a legal conclusion, or to others who were unable to prosecute their suits, or to those who died before any decision had taken place, I need not stop to inquire; it is sufficient for my purpose, that such is the enormous amount of property with which the Court of Chancery has to deal;—and although it should be assumed,—which I do not admit—that one half that sum belongs to minors and lunatics, and is merely in deposit until the happening of those events which will occasion its release, yet even the remaining half must sufficiently show a magnitude of individual interest which ought to be more promptly provided for. And I may be allowed to say, parenthetically, that some proof of the unfortunate situation of suitors will be found in several parliamentary enactments, by which large sums have been, from time to time, taken from funds belonging to those who had been suitors in the Court of Chancery, upon the assumption that such sums were never likely to be claimed, and might therefore be applied to public purposes, under a parliamentary pledge that they should be restored if the unfortunate proprietors should ever, by themselves or their representatives, establish their right.

If I have proved that a serious grievance exists, and I am asked for what I contend?—I answer, on the part of the public, I ask that every man having, or believing that he has, a just claim, cognizable only in a Court of Equity, shall have the means of obtaining a decision without unnecessary delay, I adopt fully the sentiments of a noble Lord, remarkable for his acuteness and his eloquence, who thus expressed himself when discussing a similar question in 1826.

His Lordship said,—“I think it a monstrous thing, that, in a great nation like this, there should not be a national establishment so strong as to enable it to hear and dispose of a cause in equity the moment it is ripe for hearing.”

Sir, it is for this I contend. It will not—it ought not to—satisfy the public, because it does not meet the claims of justice, that your judicial establishment should only be equal to an earlier state of society, and should be inadequate to the wants of society as they now exist. It is no answer to say, that you have increased your judicial establishment by an additional equity Judge. It will form a part of my duty to endeavour to prove that you have not increased it in the most useful manner; but if I should fail in that endeavour, it is a sufficient answer to say, that, however judicious the means and the manner, they have not been sufficient to meet the necessities of the case. The suitors need—urgently need—

further means: and this leads me to another part of my subject,—that immediately connected with the Equity Court of Exchequer, and I may be allowed to premise that, in discussing this part of my subject, I claim the adoption of the practical remedy I intend to suggest, not more as a relief to the suitors in Chancery, than as a measure of justice to the Court of Exchequer, and to those who would resort to the Court for the recovery of their rights.

Upon a former occasion I stated to the House, upon the authority of Lord Coke, that a Court of Equity was believed to have been held in the Exchequer Chamber before the statute of 33 Henry 8; and then, as that eminent lawyer affirms, it must be a Court of Equity by prescription. It is ascertained to be a supreme and independent Court of Equity, possessing a concurrent jurisdiction with the Court of Chancery in all matters which are the subject of relief and discovery in that Court. It acquired, practically, almost the exclusive determination of the questions relating to tithe; but, until a recent period, it was much resorted to by other suitors, and, in some points of practice, conferred advantages upon suitors which those resorting to the Court of Chancery could not acquire; it, however, unfortunately happened,—so far as the suitors in equity were interested, that the legislature, upon five several occasions, adopted measures, well intended and generally useful to the Common Law or Plea side of the Court of Exchequer, but extremely injurious to the Equity Court,—and which will be illustrated by the returns for which I am about to move, and by which I seek to shew the unfrequent sittings of the Equity Court of Exchequer since the parliamentary influence alluded to, as compared with the period anterior to those measures.

Prior to the year 1817, all the Barons of the Exchequer sat together as a Court of Equity, and it may be taken as a fact, that in and out of term, the Court of Equity sat about one hundred and twenty-three days in each year; but in the year 1817, an act was passed to enable the Lord Chief Baron to sit alone, for the purpose of hearing and determining causes on the Equity side of the Exchequer; and if he should be prevented by sickness or other unavoidable cause, it was then lawful for his Majesty to appoint one of the other Barons to hear equity causes: the object intended was, to assist the common law jurisdiction; by enabling both that Court and the Court of Equity—by a division of the judicial strength, to sit at the same time; and accordingly, a separate Court or place of sitting for the Court of Equity was provided, but the immediate effect was prejudicial to the interests of the equity suitor, because the more frequent sitting of the Common Law Court greatly increased the common law business, and obliged the Lord Chief Baron to give his attendance in the decision of questions belonging to the common law jurisdiction; so that the Court of Equity, instead of being open, as formerly, every day during each term, and for a considerable time out of term, was

closed, except when the Chief Baron could withdraw himself from the common law business; and as to the power contingently given to a puisne Baron, it was so uncertain and doubtful that it seldom came into operation.

In 1830, a still larger, and, as it affected the Equity Court, more disadvantageous, measure passed the legislature. It was, by 1 Wm. 4, c. 70, enacted, that attorneys of the King's Bench or Common Pleas might practise on the plea side of the Court of Exchequer, instead of the Clerks in Court, who had previously enjoyed the exclusive practice. The effect was, to produce a great increase of business in the Common Law Court, and, of course, still further to occupy the time of the Chief Baron, and to render his sitting in the Equity Court more inconvenient.

In 1833, an act passed for the better administration of justice in the privy council; and in section 25 is this recital:—

Whereas, by reason of the great increase of business on the common law or plea side of the said Court of Exchequer, the Lord Chief Baron is prevented from giving so much time as heretofore to the sittings on the Equity side of the said Court; and the sittings on the Equity side of the said Court being necessarily suspended during the absence of the Lord Chief Baron, great inconvenience is thereby sustained by the suitors and practitioners on the equity side of the said Court.

Sir, I have read this part of the preamble, to confirm my statement of the effect of the former measures, as well upon the common law jurisdiction, by increasing that branch of litigation, as upon the equity court, by occupying the time which otherwise would have been devoted to the claims of the equity suitor. That act also recites the doubt whether the puisne Baron could sit when the Chief Baron was not prevented by illness, but by the performance of judicial duties elsewhere; and then it enacts, that a puisne Baron, authorized by warrant from the Crown, may sit in the Court of Equity “on such days as the Lord Chief Baron of the said court shall sit on the common law side of the said court during the term, or shall preside at the sittings at Nisi Prius, in London or Middlesex, after the term, or shall attend at the Judicial Committees of her Majesty's Privy Council.” The effect of this act has not been such as the legislature intended: the first part of the remedy has been of little value, because, in term, the extent and importance of the business to be transacted in the Common Law Court, rendered the presence of the puisne Baron desirable; and the provision relating to the sittings out of term is so uncertain as to have occasioned the most serious inconvenience, and very great discouragement, to suitors; for instance, a puisne Baron is authorised to sit on such days as the Lord Chief Baron shall preside at Nisi Prius; and it has happened, that when the chief Baron was supposed to be so sitting, and the puisne Baron was engaged in hearing an equity cause, in-

formation reached him that the Chief Baron was not sitting, but one of the other barons was presiding for him, and, of course, the baron on the Equity side had no jurisdiction, and immediately adjourned his court, to the loss, inconvenience, and delay of the suitor; and I am assured that, at the last sitting, not less than thirty orders for the payment of money were made by the baron sitting in the Court of Equity, when he had no jurisdiction whatever, although he was not aware that the contingency which would have given him jurisdiction had not occurred.

In 1836, another act passed, to authorise a Puisne Baron to sit in the Court of Equity during the absence of the Chief Baron on the circuit, and also to continue the hearing of a cause which he had in part heard. But, Sir, there appears to have been a fatality connected with every remedy attempted to be applied to this Court. The authority to sit during the absence of the Chief Baron upon circuit, must produce but a limited, if any, benefit, because it would generally happen that the puisne Baron's circuit would commence as early as that of the Chief Baron; but the other part of the remedy intended by the legislature has been found to increase the inconvenience and disappointment of the suitor; because, having obtained a partial hearing of his cause before the puisne Baron, and expecting to continue that hearing on the following day, he has attended with his counsel and solicitor, and found, to his annoyance, that instead of the puisne baron, the Lord Chief Baron was then sitting, who could not, of course, proceed with a cause in part heard,—and thus the fees and the time were lost to the suitor; and similar disappointments have arisen where a cause has been in part heard by the Lord Chief Baron, who, instead of sitting on the following day, was succeeded by a puisne baron.

The last act to which I shall call the attention of the house, passed in the year 1838, which enabled the Courts at Westminster to sit *in banc*.—in other words, the judges, except the chiefs, to sit in their respective Courts, when those Chiefs were engaged at *nisi prius*; and I shall not feel it necessary to say more of that act than that it had the same tendency as the former acts, to reduce the days of attendance in the Equity Court of Exchequer; because, the Chief Baron being engaged in trying causes at *nisi prius*, and the other barons sitting *in banc* to hear arguments, perhaps of the most important character, it became essentially necessary that the Court should not be further weakened in its judicial strength by the absence of one of the barons to sit in the Equity Court.

This statement, Sir, brings me nearly to the close of that which I intended to offer, relating to the Court of Equity in the Exchequer, except as to the remedy I am about to suggest; and, really, upon the subject of that remedy, I cannot anticipate any objection on the part of this House, unless it be found in some opposing plan to be suggested in competition with that which I venture to recommend, and which plan,

as I understand it from rumour, I shall very shortly consider, and endeavour to show ought not to be adopted. But first, as to my practical remedy:—I collect from the several acts I have quoted, that it was the intention of the legislature to establish a useful, efficient Court of Equity in the Exchequer. It appears to me that the legislature is pledged to effect that object. Do I state this too highly? Let me contend, only, that the legislature is committed not to deteriorate the Court of the Equity suitors. I have shown, I trust beyond the possibility of a doubt,—that unintentionally, the legislature has injuriously interfered with that Court; I therefore ask that it should be placed upon as good a footing as it was in 1817. I do not expect that benefits conferred upon others should be cancelled. I do not ask that you should take back the advantages given to the common law jurisdiction; but I do ask that you should accomplish the declared object of the several enactments,—that an efficient Court of Equity should be open to the suitor; and this, as it appears to me, can only be effected by one course. It was intended that one Judge should be constantly sitting in the Equity Court, instead of the four Barons, who had, until the act of 1817, been in constant attendance upon that Court. Take, therefore, the Baron that now sits—so much to his own credit, and the advantage and satisfaction of the suitors—in the Equity Court, and appoint him the sole Equity Judge. You must, I am aware, have another *puisne* Baron in his stead, or, if another Judge in Equity be preferred, then appoint that other Judge. I am contending for principles and for practical remedies, not for the shape or form of patronage. I admit that either course will involve the necessity of appointing another Judge; but can the expence of such a proceeding be put in comparison with the serious, the ruinous inconvenience to which the suitors of the Court of Chancery are exposed, partly by the amount of business naturally flowing into that Court, and partly by the absence of all relief which the Court of Exchequer, under a more efficient form, would furnish? And I further claim it as an act of justice to the Court of Exchequer, and to those who are now suitors in that Court.

Allow me also to remind the House, that the Court of Equity in the Exchequer, has already, its own building; it has its own offices for the transaction of business; it has its officers; all the machinery is ready; it wants only a different arrangement of the judicial power. The plan proposed is not new; it has been more than once suggested by Lord Lyndhurst; and I find that so late as 1836, the present Master of the Rolls expressed his approbation of the plan—(I quote from his Lordship's published speech, page 49.) He said:

“It has given me great satisfaction to hear my noble and learned friend opposite declare his willingness to support a proposition for the appointment, not only of an additional judge in the Court of Chancery, but also of an equity judge in the Court of Exchequer. I entirely concur with him in



thinking that an increase of judicial power to that extent is required."

Sir, I could add many other authorities upon this point, but it may be more material to show how admirably such an arrangement would adapt itself to other reforms, especially if any should be made in the appellate jurisdiction; and how objectionable, on the contrary, would be the plan supposed to be in contemplation, for augmenting the judicial strength of the Court of Chancery, and the abolition of the Equity Court in the Exchequer.

Notice being taken, that forty members were not present; House counted, and forty members not being present, the House was adjourned.

### LEGAL ANTIQUITIES.

#### WRIT OF PROTECTION TO A COMMON ATTORNEY OF THE KING'S BENCH.

1 Richard 1.

RICHARD, by the grace of God King of England and France, and Lord of Ireland.

To the Mayor and Bailiffs of the City of Coventry, and every of them, greeting:

Whereas, on the part of William Bristowe, one of the attorneys of our Court of the Bench, it has been often shewn to us, that whereas he is a common attorney in the Bench aforesaid, and divers matters of many of our liege subjects in the same Bench prosecuting and defending, he as their attorney is prosecuting, and the same William, and all other attorneys in the Bench aforesaid prosecuting or defending for their masters and clients, ought not to be drawn and compelled to answer before any secular Judges for any pleas, except before our Justices of the Bench aforesaid, (felonies, and appeals and pleas of free tenement, only excepted;) neither from the time where there is no memory have they been accustomed: And that certain malevolent people, ignorant of the privilege of our aforesaid Court, forced him the same William to plead before you, as we have learned; and by your ministers caused him to be attached, to the great damage of him the said William, and several of our liege subjects in our aforesaid Court prosecuting and defending, whose attorney the same William is, are manifestly endangered, whereof he has supplicated us to provide to him a fit remedy in this behalf: And willing to do to the same William what is just and consonant to reason, and to cause to be observed inviolably the liberties and privileges of our Court aforesaid, we have oft-times commanded you, and every of you, that you no longer claim to hear any manner of pleas and complaints against the aforesaid William by any persons whomsoever moved or to be moved before you, or any of you, by whatsoever names the parties aforesaid may be called in the same, except as before excepted, ..... and

him the same William, together with his pledges and manucaptors from that Court, where so before you, or any of you, he has been forced to plead, without delay you freely permit to depart, saying to the complainants in those suits that they may prosecute their complaints aforesaid in our Court of the Bench aforesaid, demanding justice there against the aforesaid William, if to them it shall seem expedient. You, nevertheless, slighting our aforesaid commands to you, and every of you, so often therefore directed, in the pleas aforesaid before you moved and pending, .... to the no small and heavy damage of the said William, and the manifest peril, unjustly, of many of our liege subjects prosecuting and defending in our aforesaid Courts, whose attorney the same William is, of which we understand that many are still depending.

We command you, and every of you firmly enjoining, that all manner of pleas and complaints towards the aforesaid William, by whomsoever moved or to be moved before you, or any of you, by whatsoever names the parties aforesaid may be called in the same, except as before excepted, .... you no more claim to hear, and him the said William, together with his pledges and manucaptors from that Court, where so before you, or any of you, he has been forced to plead, without delay you freely permit to depart, saying to the complainants in those suits, that they may prosecute their suits in our Court of the Bench aforesaid, there to follow up justice against the aforesaid William, if to them it shall seem expedient; or that you yourselves, before our Justices at Westminster, in the Octaves of St. Hilary, shewing wherefore our commands aforesaid, so often to you thereupon directed, you refuse to follow: And have there this writ. Witness, T. Bryan, at Westminster, the 28th day of November, in the first year of our reign.

CONTINGESBY.

[We are indebted to a learned legal antiquary for the above translation of this ancient and curious writ. Ed.]

### CIRCUITS OF THE COMMISSIONERS FOR THE RELIEF OF INSOLVENT DEBTORS.

*Autumn Circuits, 1839.*

#### NORTHERN CIRCUIT.

H. R. REYNOLDS, Esq. Chief Commissioner.  
*Rutlandshire*, at Oakham, Wednesday, Oct. 23.  
*Yorkshire*, at Sheffield, Friday, October 25.  
*Yorkshire*, at Wakefield, Monday, October 28.  
*At the Town of Kingston-upon-Hull*, Saturday, November 2.  
*Yorkshire*, at York and City, Tuesday, Nov. 5.  
*Yorkshire*, at Richmond, Thursday, Nov. 7.  
*Durham*, at Durham, Friday, November 8.  
*Northumberland*, at Newcastle-upon-Tyne and Town, Monday, Nov. 11.  
*Cumberland*, at Carlisle, Wednesday, Nov. 13.

*Westmorland*, at Appleby, Friday, Nov. 15.  
*Westmorland*, at Kendal, Saturday, Nov. 16.  
*Lancashire*, at Lancaster, Monday, Nov. 18.  
*Lancashire*, at Preston, Tuesday, Nov. 26.  
*Lancashire*, at Liverpool, Thursday, Nov. 28.  
*Cheshire*, at Chester and City, Monday, December 2.  
*Flintshire*, at Mold, Wednesday, December 4.  
*Denbighshire*, at Ruthin, Thursday, Dec. 5.  
*Anglesey*, at Beaumaris, Saturday, Dec. 7.  
*Carnarvonshire*, at Carnarvon, Monday, December 9.  
*Merionethshire*, at Dolgelly, Wednesday, December 11.  
*Montgomeryshire*, at Welchpool, Friday, December 13.

MIDLAND CIRCUIT.

J. G. HARRIS, Esq., Commissioner.

*Eues*, at Chelmsford, Tuesday, Oct. 29.  
*Eues*, at Colchester, Wednesday, October 30.  
*Suffolk*, at Ipswich, Thursday, October 31.  
*Norfolk*, at Yarmouth, Saturday, Nov. 2.  
*Norfolk*, at Norwich and City, Monday, November 4.  
*Norfolk*, at Lynn, Wednesday, November 6.  
*Suffolk*, at Bury Saint Edmunds, Thursday, November 7.  
*Cambridgeshire*, at Cambridge, Friday, November 8.  
*Huntingdonshire*, at Huntingdon, Saturday, November 12.  
*Northamptonshire*, at Peterborough, Monday, November 11.  
*Lincolnshire*, at Lincoln and City, Tuesday, November 12.  
*Nottinghamshire*, at Nottingham and Town, Thursday, Nov. 14.  
*Derbyshire*, at Derby, Saturday, Nov. 16.  
*At the City of Lichfield*, Monday, Nov. 18.  
*Staffordshire*, at Stafford, Tuesday, Nov. 19.  
*Shropshire*, at Shrewsbury, Friday, Nov. 22.  
*Shropshire*, at Oldbury, Monday, Nov. 25.  
*Warwickshire*, at Birmingham, Tuesday, November 26.  
*Warwickshire*, at Warwick, Thursday, November 28.  
*At the City of Coventry*, Saturday, Nov. 30.  
*Leicestershire*, at Leicester, Monday, Dec. 2.  
*Northamptonshire*, at Northampton, Wednesday, Dec. 4.  
*Bedfordshire*, at Bedford, Thursday, Dec. 5.  
*Buckinghamshire*, at Aylesbury, Friday, Dec. 6.

HOME CIRCUIT.

T. B. BOWEN, Esq., Commissioner.

*Kent*, at Dover, Wednesday, Oct. 23.  
*At the City of Canterbury*, Thursday, Oct. 24.  
*Kent*, at Maidstone, Friday, Oct. 25.  
*Sussex*, at Horsham, Tuesday, Oct. 29.  
*Hertfordshire*, at Hertford, Wednesday, November 20.

SOUTHERN CIRCUIT.

W. J. LAW, Esq., Commissioner.

*Berkshire*, at Reading, Monday, Oct. 28.  
*Oxfordshire*, at Oxford, Tuesday, Oct. 29.  
*Worcestershire*, at Worcester and City, Thursday, Oct. 31.

*Herefordshire*, at Hereford, Saturday, Nov. 2.  
*Radnorshire*, at Presteigne, Monday, Nov. 4.  
*Brecknockshire*, at Brecon, Tuesday, Nov. 5.  
*Carmarthenshire*, at Carmarthen and Borough, Thursday, Nov. 7.  
*Cardiganshire*, at Cardigan, Saturday, Nov. 9.  
*Pembrokeshire*, at Haverfordwest and Town, Monday, Nov. 11.  
*Glamorganshire*, at Swansea, Wednesday, November 13.  
*Glamorganshire*, at Cardiff, Friday, Nov. 15.  
*Monmouthshire*, at Monmouth, Monday, November 18.  
*Gloucestershire*, at Gloucester and City, Wednesday, Nov. 20.  
*At the City of Bristol*, Saturday, Nov. 23.  
*Somersetshire*, at Bath, Tuesday, Nov. 26.  
*Somersetshire*, at Wells, Wednesday, Nov. 27.  
*Devonshire*, at Exeter and City, Friday, November 29.  
*Devonshire*, at Plymouth, Monday, Dec. 2.  
*Cornwall*, at Bodmin, Tuesday, Dec. 3.  
*Dorsetshire*, at Dorchester, Friday, Dec. 6.  
*Wiltshire*, at Salisbury, Monday, Dec. 9.  
*At the Town of Southampton*, Tuesday, Dec. 10.  
*Hampshire*, at Winchester, Wednesday, December 11.

LIST OF NEW PUBLICATIONS.

The Practical Man, or Pocket Companion for Solicitors, Valuers, and Owners of Property. By Rolla Rouse, of the Middle Temple, Esq., Author of "Copyhold and Court-Keeping Practice," &c. Third Edition, with numerous and material additions. Price 7s. 6d. cloth.

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William Sim, Chancery Lane,  
 William Joseph Little, Devonport.  
 James Scott, Lincoln's Inn Fields.  
 Mark Anthony Reyroux, Old Broad Street.

- Phillips, Nicholas, Carr Mills, Stockport, Chester, Cotton Spinner and Manufacturer. *Makinson & Co., Temple; Atkinson & Co., Manchester.* July 26.
- Plank, Frederick, Plymouth, Devon, Perfumer. *Blake & Co., Essex Street, Strand; Prideaux & Co., Plymouth.* Aug. 6.
- Parlour, William, Liverpool, Share Broker and Agent. *Vincent & Co., Temple; Kenny, Liverpool.* Aug. 6.
- Pattinson, Thomas, Ashton-under-Lyne, Timber Merchant, Joiner and Builder. *Battye & Co., Chancery Lane; Gibbon, Ashton-under-Lyne.* Aug. 9.
- Paramore, David, Devonport, Merchant. *Adlington & Co., Bedford Row; Billing, Devonport.* Aug. 9.
- Phillips, William, Liverpool, Marine Stores and Oakum Dealer. *Kirk, Symond's Inn; Yates, Liverpool.* Aug. 13.
- Ransford, John, Leamington Priors, Warwick, Coal Merchant. *Weeks & Co., Cook's Court, Lincoln's Inn; Carter & Co., Coventry.* July 23.
- Russell, John Wood, Liverpool, Ship Carpenter. *Brooker, Liverpool; Holme & Co., New Inn.* July 23.
- Rose, John, and William Pearson, Stratford-upon-Avon, Warwick, Coal Dealers. *Adlington & Co., Bedford Row; Hobbes, Stratford-upon-Avon.* July 26.
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- Warburton, George, Manchester, Victualler. *Norris & Co., Bartlett's Buildings; Prescott, Manchester.* Aug. 6.
- Wilson, Jane, and Eliezer Chater Wilson, Skinner Street, London, Printers. *Turgand, Off. Ass.; Birt, Southampton Street, Fitzroy Square.* Aug. 13.
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- Walsh, Samuel Henry, Liverpool, Banker and Merchant. *Adlington & Co., Bedford Row; Duncan & Co., Liverpool.* Aug. 16.
- Westmore, John, Brandy Mount, Gosport, Southampton, and of the West Medina Mill, Northwood, Isle of Wight, in the same County, Corn Merchant and Miller. *Holme & Co., New Inn; Cruickshank & Co., Gosport.* Aug. 20.
- Yole, James Cloke, East Stonehouse, Devon, Coal Merchant. *Collett & Co., Chancery Lane; Chapman, Devonport.* Aug. 20.

## PRICES OF STOCKS.

Friday, 23rd August, 1839.

Bank Stock, div. 7 per Cent.	184 $\frac{1}{2}$ s 5
3 per Cent. Reduced	92 $\frac{1}{2}$ s 2 a $\frac{1}{2}$
3 per Cent. Consols Annuities	91 $\frac{1}{2}$ s 2 a $\frac{1}{2}$
3 $\frac{1}{2}$ per Cent. Annuities, 1818	99 $\frac{1}{2}$ s
3 $\frac{1}{2}$ per Cent. Reduced Annuities, 99 $\frac{1}{2}$ s	99 $\frac{1}{2}$ s
New 3 $\frac{1}{2}$ per Cent. Annuities	98 $\frac{1}{2}$ s
Long Annuities, expire 5th Jan. 1860	14 $\frac{1}{2}$ s
Annuities for 30 yrs., exp. 10th Oct. 1859	14 $\frac{1}{2}$ s 16
Ditto 5th January, 1860	14 $\frac{1}{2}$ s
India Stock, div. 10 $\frac{1}{2}$ per Cent.	247 s 6
Ditto Bonds, 3 per Cent.	7s. a 5s. a 16s. pm.
Bank Stock for Account, 29th Aug.	184 $\frac{1}{2}$ s
3 per Cent. Cons. for Acct., 29th Aug.	91 $\frac{1}{2}$ s
India Stock for Account, 29th Aug.	246 $\frac{1}{2}$ s
Exchequer Bills, 1000l. a 2d. and 1 $\frac{1}{2}$ d.	
20s. a 21s. a 16s. a 19s. a 17s. pm.	
Do. 500l. a 2d. and 1 $\frac{1}{2}$ d.	
20s. a 22s. a 16s. a 19s. a 17s. pm.	
Do. Small, a 2d. & 1 $\frac{1}{2}$ d.	
20s. a 22s. a 16s. a 19s. a 17s. pm.	

# The Legal Observer.

SATURDAY, SEPTEMBER 7, 1839.

— "Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## ON THE PAYMENT OF RENT AFTER THE DESTRUCTION OF THE PREMISES.

It has long been a well-settled rule of law—although it is rarely provided against in practice—that a lessee is liable for the payment of rent notwithstanding the destruction of the premises demised by fire. This rule equally applies whether the covenant for the payment of rent is expressed or implied;<sup>a</sup> and is enforced as well in courts of equity as in courts of law; although in the covenant to repair an exception is inserted relieving the lessee from liability or damage by fire.<sup>b</sup> "If a court of equity," says Mr. Fonblanque,<sup>c</sup> "without requiring circumstances which the rule of law does not reach, will, in direct opposition to this rule, relieve the lessee in all cases in which the enjoyment of the demised premises is lost, it must be admitted that equity does in such cases control the law, but if the case involve some particular circumstances of which the lessee could not avail himself at law, but which in conscience ought to be respected, its interference does not control, but proceeds on the ground of the rule of law not being applicable to or framed to meet such case. If the lessor covenants to rebuild the premises, in the event of their being burned down, as a court of law could not in an action for rent advert to this covenant, a court of equity might, perhaps, be induced to restrain the lessor from proceeding in

such action, it being against conscience that a man should insist on the benefit of a covenant, which was induced by another covenant which he refuses or neglects to perform." And in *Brown v. Quilter*, and in other cases in equity,<sup>d</sup> where the lessee had covenanted to repair (accidents by fire excepted) and the house having been burned, the lessor being insured, and having received the insurance money, has neglected to rebuild, an injunction has been granted restraining an action at law by the lessor for the rent till the house should be rebuilt. But in the case of *Hare v. Grove*,<sup>e</sup> *Brown v. Quilter* and all the preceding authorities were reviewed, and upon full consideration the Court of Exchequer decided that as there was no defence against an action, so the tenant has no remedy in equity against the effect of the substantive independent covenant to pay the rent during the term; and the case of *Hare v. Grove* was confirmed by Lord Eldon, C., in *Holtzapf v. Baker*.<sup>f</sup> But perhaps the strongest case on this subject is that of *Leeds v. Cheatham*,<sup>g</sup> in which it was held by Sir John Leach, V. C., that a tenant has no equity to compel his landlord to expend money received from an insurance office on the demised premises being burned down, in rebuilding the premises, or to restrain the landlord from suing for the rent until the premises are rebuilt. His Honor stated his opinion with his accustomed clearness. "It appears to me that in this respect equity must follow the law. The plaintiff might have provided in the lease

<sup>a</sup> *Monk v. Cooper*, Stra. 763; Lord Raym. 1477; *Weitgall v. Waters*, 6 T. R. 488; *Baker v. Holtzapf*, 4 Taunt 45.

<sup>b</sup> *Hare v. Groves*, Anst. 687; *Holtzapf v. Baker*, 18 Ves. 115.

<sup>c</sup> 1 Eq. 378. 4th Edit.

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<sup>d</sup> *Camden v. Morton*, 2 Eden, 219; S. C. Selw. N. P. 436; *Brown v. Quilter*, Eden, *ubi sup.*; Ambl. 619.

<sup>e</sup> 3 Anst. 687. <sup>f</sup> 18 Ves. 115.

<sup>g</sup> 1 Sim. 146.

for a suspension of the rent in the case of accident by fire, but not having done so, a court of equity cannot supply that provision which he has omitted to make for himself, and it must be intended that the purpose of the parties was according to the legal effect of the contract. With respect to the equity which the plaintiff alleges to arise from the defendant's receipt of the insurance money, there is no satisfactory principle to support it. The defendant having so contracted with the plaintiff as to render himself liable to rebuild the outwork of the factory in case of fire, has very prudently protected himself by insurance from the loss he would otherwise have sustained by such an accident. But upon what principle can it be that the plaintiff's situation is to be changed by that precaution on the part of the defendant, with which the plaintiff had nothing whatever to do. The plaintiff has sought his protection in the contract by the covenant which he has required from the defendant, and to those covenants must he alone resort."

In all the preceding cases there has been either a lease or an agreement for a term of years. It has recently been held that the same principle applies to a demise from year to year, and to the occupation of a *second-floor*; and further, that the rent may be recovered in an action for use and occupation.<sup>b</sup> The following portion of the judgment of *Tindal*, C. J., as to these points, is well worthy of attention:—"Upon the first point, we can see no legal ground for holding that the relation of landlord and tenant between these parties was determined by the consumption of the premises by fire. If there had been an agreement in writing between the parties for a term of years, no question could have been made but that the term of years still existed; and a tenancy from year to year, until it is determined by a notice to quit, is, as to its legal character and consequences, the same as a term for years; upon the facts stated in this case it must stand admitted that the tenancy was not determined by any regular notice to quit; and the case of *Baker v. Holtzapfelfell*, 4 Taunt. 45, is a direct authority that a tenancy for a term, under an agreement, not being an instrument under seal, is not determined by a fire during the continuance of the tenancy. We think, therefore, the defendants continued tenants to the plaintiff until such tenancy was put an end to by the

plaintiffs' letting off the premises to a stranger, viz. at Lady-day 1836, and that they are liable to rent up to that day. The remaining question is, whether the defendants are liable in this form of action. The statute 11 Geo. 2, c. 19, enables landlords 'to recover a reasonable satisfaction for lands, &c. held or occupied by the defendant in an action on the case, for the use and occupation of what was so held or enjoyed;' from which it seems to follow, that if there be an actual *holding*, and the power to occupy or enjoy is given by the landlord to the tenant, so far as depends on the landlord, the action is maintainable. Here, nothing was done by the landlord to take away the continuance of the occupation or enjoyment by the tenant: for it would, as it appears to us, be unreasonable to hold that the landlord's act in replacing the floor, and repairing the walls of the defendants' rooms, amounted to an eviction; and though in the case above cited, where it was held that the action for use and occupation would lie, some stress was placed by the Court upon the fact that the land was still in existence and there was no offer on the part of the defendant to give it up; so it might be argued in the present case, the space enclosed by the four walls still continued as marked out by them. If the landlord rebuilds, and the tenant chooses to re-enter and to continue his occupation of the new building, there seems nothing to prevent him, as no notice to quit had been given on either side; and if so, the obligation of each of the parties must be reciprocal, and the tenant must make satisfaction for the rent. The cases referred to in the argument, in which the tenant has been allowed to withdraw himself from the tenancy, and to refuse payment of rent, will be found to be cases where there has been either error or fraudulent misdescription of the premises which were the subject of the letting, or where the premises have been found to be uninhabitable by the wrongful act or default of the landlord himself; neither of which circumstances has occurred in this case."

This rule, as to the liability for the payment of rent, which we have been endeavouring to explain, it is to be further observed, also prevails, on the authority of the older cases, where the premises are destroyed by enemies, whether aliens or not,<sup>1</sup> or by tempest, accident, or mischance;<sup>2</sup> and we

<sup>1</sup> *Paradine v. Jane*, Aleyn, 26; Sty. 47, S. C.

<sup>2</sup> *Richards le Taverner's case*, Dy. 56 a; 1 Rol. Ab. 236.

<sup>b</sup> *Izon v. Gorton*, 5 Bing. N. C. 501.

would draw this practical conclusion from the cases to which we have adverted, that it would be well if a provision were more generally inserted in leases, negating the liability of the lessee, for the payment of rent on the destruction of the premises demised by fire or otherwise, or qualifying the covenant for the payment of rent in these contingencies.

## NOTES ON THE METROPOLITAN POLICE ACT,

2 & 3 VICTORIA, c. 47.

THIS Act\* repeals so much of the 29 Geo. 2, c. 25, as required the appointment of constables at Courts Leet, s. 1. It also empowers the addition to the Metropolitan Police District of such parts of parishes as may be within the District of the Central Criminal Court, or within fifteen miles in a straight line from Charing Cross, s. 2. Additional constables may be appointed at the expense of individuals, s. 8.

The police constables are exempted from turnpike tolls, s. 10. Summonses and warrants in criminal proceedings are to be executed by them, s. 12. A penalty of 5*l.* is inflicted for assaults on the police, s. 18.

The 2 G. 3, c. 28, relating to thefts and frauds on the *Thames*, is repealed, and enactments against offences on that river are comprised in the present act, ss. 26—37.

There are several clauses for the regulation of *Fairs*, limiting the time of keeping booths, &c. open from the hour of six in the morning till eleven in the evening, and for inquiring into the right of holding fairs and the number of days, and the trial of questions of title to hold fairs by information in the Queen's Bench, ss. 38—40.

*Public Houses* are not to be opened till one o'clock on Sundays, Christmas-day, and Good Friday, except for travellers, s. 42. Publicans are prohibited from supplying exciseable liquors to persons apparently under sixteen, to be drunk on the premises, s. 43. The regulations of 9 Geo. 4, c. 61, respecting public houses, are extended to other houses of public resort where provisions, liquors, or refreshments are sold, s. 44.

Powers are also given as to unlicensed theatres, places for bear-baiting, &c., and gaming houses; and as to the latter it is

provided that proof need not be given of gaming for money, ss. 46—49.

*Pawnbrokers* are rendered liable to a penalty for receiving pledges from persons apparently under the age of sixteen, s. 50.

The Commissioners of Police are empowered to regulate the route and conduct of persons driving stage carriages, cattle, &c. during the hours of divine service, and for preventing obstructions in the streets during processions, &c. ss. 51, 52.

A penalty of 40*s.* is inflicted on persons committing any of the various *Nuisances* specified in the act, ss. 54, 60. Dog-carts are prohibited after 1st Jan. 1840, s. 56; and street musicians must depart when desired, s. 57.

Magistrates may award compensation not exceeding 10*l.* for any hurt or damage occasioned by committing an offence contrary to the act, s. 62. Constables may apprehend any offender whose name and residence is unknown, s. 63. And idle and disorderly persons, or persons suspected of being about to commit an offence, may be taken into custody by a police constable without a warrant, s. 64. Persons committing an offence may be detained by the person against whom the offence is committed, or by his servant or any person by his authority, until the offender can be delivered to the custody of a constable, s. 66.

A constable may detain carts, &c. removing furniture between eight in the evening and six in the morning, when he has good grounds for believing that such removal is made for the purpose of *evading the payment of rent*, s. 67.

Authority is also given for detaining the horses, carriages, &c. of offenders—the taking recognizances at the Station House when the Police Courts are shut—binding over persons making charges, &c. ss. 68—72.

The act does not prevent any person from being indicted for any indictable offence made punishable on summary conviction by this act, nor from liability to a higher penalty under any other act, but no person is to be punished twice for the same offence, s. 74.

Any magistrate of one of the Police Courts is empowered *summarily to convict* for any offence under the act, and if there be no Police Court in the district, then any two magistrates may hear and determine the case, s. 76.

This act is to be construed with the 10 Geo. 4, c. 44, as one act, s. 79.

\* See pp. 307, 323, *ante*.

## CHANGES IN THE LAW

IN THE LATE SESSION OF PARLIAMENT.

NO. IX.

## CUSTODY OF INFANTS.

2 &amp; 3 Vict. c. 54.

*An Act to amend the Law relating to the Custody of Infants.* [17th August 1839.]

*Judges in Equity may make order, on petition, for access of mothers to their infant children, and if such children be within the age of seven years, for the delivery of them to their custody until attaining such age.*—Whereas it is expedient to amend the law relating to the Custody of Infants: be it therefore enacted by the Queen's most excellent majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that after the passing of this act it shall be lawful for the Lord Chancellor and the Master of the Rolls in England, and for the Lord Chancellor and the Master of the Rolls in Ireland respectively, upon hearing the petition of the mother of any infant or infants being in the sole custody or control of the father thereof, or of any person by his authority, or of any guardian after the death of the father, if he shall see fit, to make order for the access of the petitioner to such infant or infants, at such times and subject to such regulations as he shall deem convenient and just; and if such infant or infants shall be within the age of seven years, to make order that such infant or infants shall be delivered to and remain in the custody of the petitioner until attaining such age, subject to such regulations as he shall deem convenient and just.

2. *Affidavits to be received, and parties deposing falsely therein deemed guilty of perjury.*—And be it enacted, that on all complaints made under this act it shall be lawful for the Lord Chancellor or Master of the Rolls in England, and for the Lord Chancellor or the Master of the Rolls in Ireland, to receive affidavits sworn before any Master in Ordinary or Master Extraordinary of the Court of Chancery; and that any person who shall depose falsely and corruptly in any affidavit so sworn shall be deemed guilty of perjury, and incur the penalties thereof.

3. *Orders may be enforced by process of contempt.*—And be it enacted, that all orders which shall be made by virtue of this act by the Lord Chancellor or the Master of the Rolls in England, and by the Lord Chancellor or the Master of the Rolls in Ireland, shall be enforced by process of contempt of the High Court of Chancery in England and Ireland respectively.

4. *No mother against whom adultery has been established entitled to benefit of this Act.*—Provided always, and be it enacted, that no order shall be made by virtue of this act whereby any mother against whom adultery shall be established, by judgment in an action for criminal conversation at the suit of her husband, or by the sentence of an Ecclesiastical Court, shall

have the custody of any infant or access to any infant, any thing herein contained to the contrary notwithstanding.

5. *Act may be altered this session.*—And be it enacted, that this act may be amended or repealed by any act to be passed during this present session of parliament.

We frequently noticed this measure whilst it was in progress through Parliament. It will be observed that the power given by the act of ordering the access of mothers to their infant children, or committing such children, if under seven years, to the care of the mother, can be exercised only by the *Lord Chancellor* or the *Master of the Rolls*. By the Bill, as originally brought in, it was proposed to confer the same power on the Judges of the Common Law Courts, but the act as it has passed properly confines the matter to the jurisdiction of the Courts of Equity, where the interests of infants and married women are usually cognizable.

CHARACTERISTIC SKETCHES OF  
LAWYERS.

MR. BENTHAM.

FROM the Second Volume of Lord Brougham's Speeches we extract the following sketch of Mr. Bentham as a Law Reformer, to whom is assigned the highest place for *originality*.

"The age of Law Reform and the age of Jeremy Bentham are one and the same. He is the father of the most important of all the branches of Reform, the leading and ruling department of human improvement. No one before him had ever seriously thought of exposing the defects in our English system of jurisprudence. All former students had confined themselves to learn its principles,—to make themselves masters of its eminently technical and artificial rules; and all former writers had but expounded the doctrines handed down from age to age. Men by common consent had agreed in bending before the authority of former times as decisive upon every point; and confounding the question of, what is law, which that authority alone could determine, with the question, what *ought* to be the law, which the wisdom of an early and an unenlightened age was manifestly unfit to solve, they had taken it for granted that the system was perfect, because it was established, and had bestowed upon the produce of ignorant and inexperience their admiration in proportion as it was defective. He it was who first made the mighty step of trying the whole provisions of our jurisprudence by the test of expediency, fearlessly examining how far each part was connected with the rest; and with a yet more

undaunted courage, inquiring how far even in its most consistent and symmetrical arrangements were framed according to the principle which should pervade a Code of Laws—their adaption to the circumstances of society, to the wants of men, and to the promotion of human happiness.

“Not only was he thus eminently original among the lawyers and the legal philosophers of his own country; he might be said to be the first legal philosopher that had appeared in the world. For Justinian, when he undertook his great work of abridging and digesting the Roman Law, in truth only methodised existing laws, and brought into a compendious and manageable form those rules which lay scattered over so many volumes, that they were said to be ‘*the load of many camels*.’ Whatever he found, or rather whatever Tribonian and his coadjutors employed by the Emperor found, in the edicts of Prætors,<sup>a</sup> the laws of the popular assemblies,<sup>b</sup> the rescripts of former Emperors,<sup>c</sup> or the opinions and other writings of lawyers,<sup>d</sup> was deemed to be fixed law; and accordingly the Pandects, (or Digest,) any more than the Code and the Novels, contain nothing which is not specially avouched by the authority upon which it is given as law, and the Institutes, a work of matchless beauty as an abstract or summary of principles, is wholly drawn from the same sources. The like may be said of the modern Codes, of which the Frederician or Prussian is the most important that has been compiled before Mr. Bentham’s time; and although that of Napoleon, the most perfect of them all, from being the growth of an age that had already profited largely by Mr. Bentham’s labours, contains very considerable changes and improvements upon the former laws; yet these bear out a very insignificant proportion to the whole mass, which is in the main a digest of existing jurisprudence, and derives its principal claim to the public gratitude from its abolishing the local differences of the provincial systems, and giving one law to the whole empire.”

“Mr. Bentham, professing to regard no existing law as of any value unless it was one which ought to have been made, wholly unfetters himself from any deference to authority—bringing the fundamental principles, as well as the details of each legislative rule, to the test of reason alone—trying all by the criterion of their tendency to promote the happiness and improve the condition of mankind—not only shewed in detail the glaring inconsistencies and the radical imperfections of the English system, but carrying his bold and sagacious views to their amplest extent, investigated the principles upon which all human laws should be constructed, and showed how their provisions should be framed for the better accomplishment of their great purpose—the well-being of civil society, both

as regards the enjoyment of civil rights, the prevention of crimes, and the encouragement of virtue. The adaption of these principles to the particular circumstances of any given state, can only be ascertained by a careful examination of those circumstances, and, above all, by an accurate attention to the laws already existing in the country, and which, how ill soever contrived in many respects, have always, more or less, arisen out of these very circumstances. This is the business of Codification, which consists in not only reducing to a system and method the existing laws, but in so amending them as to make them capable of accomplishing their cardinal object—the happiness of the community.”

Lord Brougham, after thus assigning to Mr. Bentham, not merely the first place among Legal Philosophers, but the glory of having founded the sect, and been the first who deserved the name, proceeds to notice other writers:—

“Voltaire, for example, great and original in whatever pursuit, whether of letters or of science, whether of gay or of grave composition, was enlightened by his extraordinary genius, had, with his characteristic vigour and sagacity, attacked many false principles that prevailed in the judicial systems of all nations. Filangieri, who of all writers before Bentham comes nearest to the character of a legal philosopher, had exposed, with the happiest effect, the folly as well as cruelty of severe penal inflictions; Montesquieu, whose capacity as well as his learning, is unquestionable, notwithstanding his puerile love of epigram, and his determination to strain and force all facts within the scope of a fantastical theory, had discussed with success many important principles of general jurisprudence; and Mr. Locke, a far more illustrious name, had treated with his wanted profoundness and accurate reflection, many of the principles which bear upon the political branches of legislation. But none of those great men, nor any of the others through whose writings important and useful discussions of legislative principles are scattered, ever embraced the subject in its wider range, nor attempted to reduce the whole of jurisprudence under the dominion of fixed and general rules. None ever before Mr. Bentham took in the whole departments of legislation. None before him can be said to have treated it as a science, and by so treating, made it one. This is his preeminent distinction; to this praise he is most justly entitled: and it is as proud a title to fame as any philosopher ever possessed.”

His Lordship thus speaks of Mr. Bentham’s powers and attainments:—

“Acute, sagacious, reflecting, suspicious to a fault of all outward appearances, nor ever to be satisfied without the most close, sifting, unsparing scrutiny, he had an industry which no excess of toil could weary, and applied

<sup>a</sup> Edicta Prætorum.

<sup>b</sup> Rescripta Principum.

<sup>c</sup> Leges et Plebiscita.

<sup>d</sup> Responsa Prudentum.



himself with an unremitting perseverance to master every minute portion of each subject, as if he had not possessed a quickness of apprehension which would at a glance become acquainted with all its general features. In him were blended to a degree perhaps unequalled in any other philosopher, the love and appreciation of general principles, with the avidity for minute details; the power of embracing and following out general views, with the capacity for pursuing each one of numberless particular facts. His learning was various, extensive, and accurate. History, and of all nations and all ages, was familiar to him, generally in the language in which it was recorded. With the poets and the orators of all times he was equally well acquainted, though he undervalued the productions of both. The writings of the philosophers of every country and of every age, were thoroughly known to him, and had deeply occupied his attention. It was only the walks of the exacter sciences that he had not frequented; and he regarded them very erroneously, as unworthy of being explored, or valued them only for the inventions useful to common life which flowed from them, altogether neglecting the pleasures of scientific contemplation which form their main object and chief attraction. In the laws of his own country he was perfectly well versed, having been educated as a lawyer, and called to the English Bar, at which his success would have been certain, had he not preferred the life of a sage. Nor did he rest satisfied with the original foundations of legal knowledge which he had laid while studying the system; he continually read whatever appeared on the subject, whether the decisions of our courts or the speculations of juridical writers; so as to continue conversant with the latest state of the law in its actual and practical administration. Though living retired from society, he was a watchful and accurate observer of every occurrence, whether political, or forensic, or social, of the day; and no man who lived so much to himself, and devoted so large a portion of his time to solitary study, could have been supposed to know so perfectly, even in its more minute details, the state of the world around him, in which he hardly seemed to live, and did not at all move.

"But of all his qualities, the one that chiefly distinguished Mr. Bentham, and was the most fruitful in its results, was the boldness with which he pursued his inquiries. Whatever obstacle opposed his course, be it little, or be it mighty—from what quarter soever the resistance proceeded—with what feelings soever it was allied, be they of a kind that leave men's judgment calm and undisturbed, or of a nature to suspend the reasoning faculty altogether, and overwhelm opposition with a storm of unthinking passion—all signified nothing to one who, weighing principles and arguments in golden scales, held the utmost weight of prejudice, the whole influence of a host of popular feelings, as mere dust in the balance, when any the least reason loaded the other end of the beam. And if this was at once the

distinguishing quality of his mind, and the great cause of his success, so was it also the source of nearly all his errors, and the principal obstacle to the progress of his philosophy. For it often, especially in the latter part of his life, prevented him from seeing real difficulties and solid objections to his proposals; it made him too regardless of the quarter from which opposition might proceed; it gave an appearance of impracticability to many of his plans; and, what was far more fatal, it rendered many of his theories wholly inapplicable to any existing, and almost to any possible state of human affairs, by making him too generally forget that all laws must both be executed by, and operate upon, men—men whose passions and feelings are made to the lawgiver's hand, and cannot all at once be molded to his will. The same undaunted boldness of speculation led to another and a kindred error. He pushed every argument to the uttermost; he strained each principle till it cracked; he loaded all the foundations on which his system was built, as if, like arches, they were strengthened by the pressure, until he made them bend and give way beneath the superincumbent weight. A provision, whether of political or of ordinary law, had no merit in his eyes, if it admitted of any exception, or betokened any bending of principles to practical facilities. He seemed oftentimes to resemble the mechanician, who should form his calculations and fashion his machinery upon the abstract consideration of the mechanical powers, and make no allowance for friction, or the resistance of the air, or the strength of the materials. Among the many instances that might be given of this defect, it may be sufficient to single out one from his juridical, and one from his political speculations. Perceiving the great benefits of individual responsibility in a judge, he peremptorily rejected all but what he termed *single-seated* justice, and would allow no merit whatever to any tribunal composed of more, either for weighing conflicting evidence, assessing the amount of compensation, or reversing the judgments of a single inferior judge. Holding also the doctrine of Universal Suffrage, he would have no exception whatever, and argued not only that women, but that persons of unsound mind, should be admitted to vote in the choice of representatives."

Lord Brougham also describes the excellence of Mr. Bentham in other respects.

"An habitual despiser of eloquence, he was one of the most eloquent of men when it pleased him to write naturally, and before he had adopted that harsh style, full of involved periods and new made words, which how accurately soever it conveyed his ideas, was almost as hard to learn as a foreign language. Thus his earlier writings are models of force as well as of precision; but some of them are also highly rhetorical; nor are the justly celebrated "*Defence of Usury*" and "*Protest against Law Taxes*," more finished models of moral demonstration than the Address to the French National Assembly on Colonial Emancipation

is of an eloquence at once declamatory and argumentative. The peculiar manner of scrutinizing every subject, into which he latterly fell, which, indeed, he adopted during the greater portion of his life, and which has been happily enough termed the "*exhaustive mode*," was little adapted to combine with eloquence, or with any kind of discussion calculated to produce a great popular effect; for it consisted in a careful examination of every circumstance which could by any possibility affect either side of a given question, and it gave the same expansion to all considerations, however varying in point of importance; whereas, to convince or to strike an audience, or a cursory reader, nothing can be more essentially necessary than the selection of the more important objects, and making them stand boldly out in relief above the rest. Another consequence of his addiction to this method was, that it impaired his strength both of memory and of reasoning. He investigated with a pen in his hand, trusted to his eye as much as to his recollection, and enfeebled his powers of abstract attention pretty much as analysts are apt to become less powerful reasoners and investigators than geometers. It thus happened that although he disliked conversation in which more than one joined, confining himself to a *tête-à-tête*, or what he termed "*single-handed conversation*," he exceedingly disrelished, at least for the last thirty years of his life, anything like argument, preferring anecdote, or remark, or pleasantry, in which last he was, though sometimes happy, yet often unsuccessful. But, as not unfrequently happens, he felt far more jealous of any disrespect shewn to the jokes with which his latter writings were filled, than of any dissent from his reasonings, although the former were for the most part overlaboured, far-fetched, and lumbering.

"It was a result of similar prejudices that made him undervalue not only eloquence, but poetry; and he was wont to express his thankfulness that we should never see any more Epic poems. That he might greatly prefer other exertions of original genius to those which have produced the wonders of song, is easily understood. But that he should deny the existence of the pleasure derived from works of imagination, or question the reality of the desire, or refuse it gratification, seems wholly incomprehensible, and only the more so, because his whole theory of motives proceeds upon the assumption, that man's constitution leads him to take delight in certain enjoyments; and no one surely can doubt the fact of the fine arts giving pleasure—pleasure, too, of a refined, not of a gross description. Nor could the devotion of some men's talents be rationally grudged, when it was considered how few those are whom such pursuits could ever withdraw from severer studies, and how often they are persons in whom such studies would find ungenial dispositions."

Of Mr. Bentham's moral character and private habits Lord Brougham thus writes—

"His honesty was unimpeachable, and his

word might upon any subject, be taken as absolutely conclusive, whatever motives he might have for distorting or exaggerating the truth. But he was, especially of late years, of a somewhat jealous disposition—betrayed impatience if to another was ascribed any part whatever of the improvements in jurisprudence, which all originated in his own labours, but to effect which different kinds of men were required—and even showed some disinclination to see any one interfere, although as a coadjutor, and for the furtherance of his own designs. It is said that he suffered a severe mortification in not being brought early in life into parliament; although he must have felt that a worse service never could have been rendered to the cause he had most at heart, than to remove him from his own peculiar sphere to one in which, even if he had excelled, he yet never could have been nearly so useful to mankind. It is certain that he showed, upon many occasions, a harshness as well as coldness of disposition towards individuals to whose unremitting friendship he owed great obligations; and his impatience to see the splendid reforms which his genius had projected accomplished before his death, increasing as the time of his departure drew nigh, made him latterly regard even his most familiar friends only as instruments of reformation, and gave a very unamiable, and indeed a revolting aspect of callousness to his feelings towards them. For the sudden and mournful death of one old and truly illustrious friend, he felt, as he expressed, no pain at all; towards the person of a more recent friend he never concealed his disrespect, because he disappointed some extravagant hopes which he had formed that the bulk of a large fortune, acquired by honest industry, would be expended in promoting parliamentary influence to be used in furthering great political changes. Into all these unamiable features of his character, every furrow of which was deepened, and every shade darkened by increasing years, there entered nothing base or hypocritical. If he felt little for a friend, he pretended to no more than he felt. If his sentiments were tinged with asperity and edged with spite, he was the first himself to declare it; and no one formed a less favourable or a more just judgment of his weakness than he himself did, nor did any one pronounce such judgments with a severity that exceeded the confessions of his own candour. Upon the whole then, while in his public capacity, he presented an object of admiration and of gratitude, in his private character he was formed rather to be respected and studied than beloved."

## TRANSFER OF SHARES IN JOINT-STOCK COMPANIES.

To the Editor of the Legal Observer.

Sir,

I WAS glad to see an article on the transfer of shares in joint-stock companies in a recent number of the Observer, and I think a succession of them would be very useful to the pro-

fession. There is an immense number of shares now scattered all over the country, and almost exclusively through the agency of brokers, who cannot be expected to know any thing of law, or to trouble their heads about any thing beyond their commission. I foresee abundant litigation as a probable result of transfers of this description of property being effected by persons unskilled in the law, and the probability that every member of our profession will be consulted on some point or other arising out of these transactions.

In the first place, there is not a single company in which the shares, not legally transferable until the act of incorporation was obtained, have not been transferred over and over again by the mere delivery of the scrips, the original subscriber never conceiving that he remained liable in respect of the shares so sold by him until after the act passed. The then holder became the registered proprietor, either on his own application, or by a transfer in the mode prescribed by the act from the original subscriber. When the act has received the royal assent, the *original subscribers* are the company; but it commonly happens that not half of such subscribers at that period hold a single share. The practice has been for the directors to issue advertisements, calling on the "*holders*" of the scrips to come in and exchange them for certificates under the seal of the company; and the parties who answer this call are registered as the proprietors of the shares, in lieu of the *subscribers* to whom they were originally allotted. After a certain time the register is considered as complete, and is sealed; and the result is, that all shares in respect of which no claims come in for registration remain registered in the names of the original subscribers, though they may have been sold and resold a hundred times.

It would seem very doubtful whether the original subscriber is released by the registration of a new proprietor under such a claim; for the power to sell is conferred by the act, and the mode and form of transfer is prescribed by the act. By that form the purchaser engages to hold the shares "subject to the several conditions on which (the seller) holds the same immediately before the execution hereof." Excepting in the cases of title by death, marriage, bankruptcy, or insolvency of the original subscriber, it is very doubtful how far a registration, on the mere application of the *holder*, could discharge the *first subscriber*, or confer a legal title on the party so registered.

It has, I believe, been decided, in an action by the directors for the amount of a call against such a proprietor, who chanced to have paid a former call, that he was thereby precluded from denying his ownership, and a verdict passed for the company; but if such shares eventually became worth a considerable premium, how is the title of the original proprietor to be impeached, or resisted, on his paying up all the calls and interest provided for by the act? So loosely are these transactions performed on the Exchange, that it is

every day's practice, on the purchase of shares, for the brokers, on paying the price, to obtain the delivery of the certificates and a transfer executed by the seller to the purchaser, who never registers the transfer, excepting for the purpose of a sale at a profit, with the view of steering clear of all calls and responsibility if the stock falls in value. It behoves every seller to require the execution of the transfer by the purchaser, and to see a memorial of it properly registered; otherwise he parts with all the profit that may accrue on the shares, and continues liable for all the loss.

There is a point to which I am desirous of calling the attention of yourself, and of your readers most skilled in such matters. It is a very prevailing notion that the directors of joint-stock companies are bound to register every transfer of shares produced to them in a regular form, and duly executed by the seller and the purchaser; and that they cannot object to take the transferee as the new proprietor on the ground of poverty. It is alleged that in these acts of incorporation, generally, the proprietor of shares is empowered to sell—that the transfer is to be in a given form—that a memorial of the transfer is to be entered in a book kept for the purpose—that until such memorial shall have been registered the seller shall remain liable, and the purchaser shall not be entitled to profits or to vote—and that the directors, therefore, on these provisions being complied with, cannot exercise any discretion. If this be law, all the precautions taken by the legislature, in the case of railways for instance, to secure the completion of the undertaking for the benefit of the public and the land-owners on the line, before it confers compulsory powers of taking land, are utterly vain; for after every man's land has been cut through, and turned upside down, in the event of a bad harvest, a panic in the money market, or of any other adverse circumstance which may materially depress the stock, and create a desire amongst the shareholders to relieve themselves from further responsibility, they might all transfer their shares into the hands of mere paupers, and put an end to the undertaking. I should conceive, upon general principles, that the directors had an undoubted right to refuse to register a transfer to any individual obviously and notoriously incompetent to pay up the remaining instalments on the shares proposed to be transferred; and even if the transfer had been regularly completed, it is clear that the former proprietor would not be still held liable, on the ground of fraud, if it could be shewn that no *bond fide* consideration was given—that he was cognizant of the incompetency of the transferee—and, consequently, that the real object of the transfer was manifest.

I wished to have noticed some other points, but must not trespass further upon your space at present.

A SUBSCRIBER.

[We shall be glad to receive the further remarks of our able correspondent. Ed.]

## ON LEGAL DISCUSSION SOCIETIES.

*To the Editor of the Legal Observer.*

Sir,  
I HAVE read with much pleasure the letter contained in your Number of the 10th Aug. as to Legal Discussion Societies, and after upwards of forty years' experience I can safely say that they are productive of great advantage. It happened to me, that when the stamp duty of 100*l.* was proposed to be laid on the admission of attorneys by Mr. Pitt, the Articled Clerks in the metropolis made great exertions to throw the proposed duty on the articles instead of the admissions, and their exertions having been crowned with success, the committee of clerks then formed themselves into a Legal Discussion Society, which was kept up for about three years, and having been a member of it, I can truly state that I derived great advantage from it.

I found that when a young man first began to offer his sentiments, he felt totally unequal to it, and was unable to arrange his thoughts, or even to give them utterance, or to cite the cases he had collected for his argument. In a short time, however, the difficulties he first encountered were overcome; and notwithstanding the short time the society existed, each member acquired the habit of searching for cases, selecting and arranging the principles or points, and delivering his sentiments without embarrassment. This habit I have cultivated in my progress through life, and I do not hesitate to state that much of a successful career is ascribable to the society to which I have alluded.

Besides this advantage, I derived great assistance from Euclid's Elements, Watts's Logic, Paley's Philosophy, and Locke on the Human Understanding; and it was one of the plans I adopted before and after I commenced business, to work every morning a problem in Euclid, which tended to clarify the understanding, produce reflection, preserve order, and prepare the mind for the professional difficulties and complexities likely to be encountered in the course of the day. I therefore earnestly recommend the society to the serious consideration of those young men and articled clerks who wish to succeed in their profession.

AN OLD SOLICITOR.

## DUTIES OF ATTORNEYS TO THEIR ARTICLED CLERKS.

*To the Editor of the Legal Observer.*

Sir,  
HAVING seen in your valuable journal of the 10th August, a letter from a gentleman relative to the duties of solicitors to their articled clerks, I think it would be a great injustice to the solicitors in this part of the country, to one of whom I am articled, if such an epistle were to pass unnoticed. Although the writer of that letter brings himself and a companion forward as instances of what he

asserts, together with the echoed voices of hundred besides; yet I cannot but think that he has formed a very harsh opinion against the profession, and also against the gentleman whom he has bound himself to serve. G. P. has taken the liberty to denounce the generality of attorneys as self-interested, and inattentive to their articled clerks. As far as I can judge, Sir, I can only say, that in the Midland counties the solicitors do not keep their articled clerks ignorant of practice; but, on the contrary, allow them to draw drafts when they have been in the office three years, (for I myself have not been that time, and have drawn several,) and they are there considered worthy of occupying a far more "honourable stool" than that in the copyist's office. The solicitors in this part of the country, let me inform G. P., are more liberal and consistent, and their articled clerks more independent than those he has represented. He says there is nothing but drudgery,—that a clerk cannot go out on pleasure,—in fact, from his description, I have come to the conclusion that they are the most extraordinary set of individuals any body ever heard of. I think, Mr. Editor, people should be careful how and what they write concerning such things, lest their remarks tend only to degrade the profession; and though the motive from which that letter has been written may have a sincere and laudable desire of still greater improvement, yet I conceive that your correspondent has formed his opinion too hastily, and by including all in the blame, he has much exaggerated the case, and done great injustice.

A CONSTANT READER.

## THE LAW OF JOINT INTERESTS.

### CHAPTER I.

#### Sect. 1.

JOINT-TENANCY, tenancy in common, and coparcenary, denote the quality of estates. By the quantity of estate, must be understood the extent of it; but by the quality here the manner in which the right of enjoyment is to be exercised, as whether absolutely, solely, in common, coparcenary, or joint-tenancy. There is the same division of estates in equity as at law, and they may be, consequently, either several or undivided. Sir Edward Coke ranks coparcenary as the most honourable of undivided ownerships, for coparceners claim by descent, which is by act of law and right of blood. However, I think it may be admitted, that joint-tenancy develops *κατ' εἶδος*, the nature of undivided estates, as distinguished from sole ownerships. (Co. Litt. 162*a*; 1 Prest. Estates, 7, 22; 2 Bla. Com. 102, and note by Hov.; Butl. Co. Litt. 290*b*.)

It may be said to be a spring of the juridical fountain of this country. There is no custom requisite to prove it, and no custom, that I know of, by which it is not allowed, or

abridged. The *lex mercatoria*, indeed, does not recognise it; but that is not a particular custom, but an integral part of the law itself. (12 Mod. 15; Lofft. 385; 2 Stark. Evid. 257.) By this, I mean the common law, or *Lex non scripta*, of this country. The Spiritual Courts, as governed by the civil law, are no criterion on this point. The Courts of Common Law and Equity will not be guided by those Courts or their doctrines; and whatever objection the latter may have to the rules of the common law (as the doctrine of joint-tenancy) they will be preserved and upheld. (2 P. Wms. 346; 529; 3 *ib.* 1, 14; 1 Atk. 460, and note; 1 Salk. 311; 1 Eq. Ca. Ab. 249; 2 *ib.* 425.)

Joint-tenancy appears to be created where the same interest in real or personal property is, by the agency of the party, passed by the same matter of conveyance or claim, *in solido*, and not as merchandize, or for purposes of speculation, to two or more persons in the same right, either simply, or by construction or operation of law jointly.

On the death of one joint-tenant the whole estate accrues to the survivor, *jure accrescendi*. This *jus accrescendi* holds place as well in equity as at law. Equitable estates, therefore, are subject to joint-tenancy and its properties. The trust as well as the term passes to the survivor; and if the estate of two joint-tenants is assigned in trust for them, or such a trust is raised by implication, the equitable interest ensues the nature of the former legal estate. (*Aston v. Smallman*, 3 Vern. 556; 2 P. Wms. 529, *per* M. R.; 4 Bac. Ab. Guill. ed. 478; Toller's Exors. 453, 454; *R. v. Williams*, Bunb. 342; 4 Com. Dig. Estates, 67; 1 Eq. Ca. Ab. 5, 38; 1 Atk. 467; 15 Ves. 365.)

But both the Courts of Law and Equity dis-favour this mode of holding property *beneficially*.

During the feudal rigour, however, and when assurances were simple, joint-tenancy was found to be most useful. It was adopted to prevent dower and curtesy attaching. It avoided wardship, primer seisin, and other feudal imposts of the same description; for the title by survivor is paramount. A conveyance was made to the father and son, or to several co-trustees, of whom the interested owner was one, and a descent avoided. By the recent Dower Act, no title of dower affects a joint estate, whether legal or equitable. (Prest. Abst. 370; Co. Litt. 30a, 183a, by Thomas, 789.) (5 Rep. 3; 1 Rep. 78; 14 Vin. Ab. 484; Litt. s. 45; note by Butl. 330; 4 Bac. Ab. 454; Roper. Husband & Wife, 525; *Myght's case*, 8 Rep.; *Samme's case*, 13 Rep. 24; 3 Salk. 367; *Hayes's* Conv. 42; 3 & 4 W. 4, c. 106, s. 2.)

At this day, as respects trust estates, joint-tenancy is very convenient; as formerly it was usual to infeoff several jointly to reinfieoff, lest, if there were only one feoffee, by his death an incapacity might arise. So, it is observed, that it is convenient to give a trust or mortgage estate to several as joint-tenants, lest the estate should devolve to an infant heir, or lest

the name of one should be mistaken. (1 Rep. 78; 10 Jarm. Byth. 6, and 32 note, 2 ed.; Points in Conv. 110; Rits. Max. 99; *Freem.* by Hov. 10.)

So, where a person out of the kingdom wishes to sell an estate, the *jus accrescendi* among the trustees obviates the inconvenience which might otherwise ensue on the death or incapacity of one. (Rits. Max. 7.)

Before the late statute, if it were difficult to obtain the acknowledgment of a vouchee, it was usual to make two or more tenants to the *præcipe* as joint-tenants, since, if one died, the proceedings would not be impeded. So in the case of demandants. (3 & 4 W. 4, c. 74; —, *demt.*, 4 Taunt. 101; *Norris*, *demt.*, 5 Taunt. 73.)

The rules of joint-tenancy are fully applicable to trustees at law; and many cases and points stated hereafter with respect to joint-tenancy, have arisen in cases where trustees are concerned. (*Per* Lord Alvanley, 3 Bos. & Pull. 409; 11 East, 288.)

Even where persons are beneficially interested as joint-tenants, they having the power of taking their respective shares in certainty during their lives, run a very fair risk; but the difficulty is, that parties are not generally aware that they stand in such a situation.

However, we hear of agreements between parties that the property of each shall mutually pass to the survivor, or of parties making wills in favour of each other: agreements which are supported in equity. (3 Ves. 402; *Roper* on Legacies, 662; *Hinckley v. Simons*, 4 Ves. 161; 5 Burr. 2803.)

So of a Tontine Society, where all the shares are as a joint stock and accrue to the surviving subscribers, which *per* Littledale, J., is nothing more than an agreement that the subscribers should become as joint-tenants, and is not within the mischief to be prevented by 6 G. 1, c. 18. (*Nochels v. Crosby*, 13 Barn. & Cress. 814.)

Anciently joint-tenancy was favoured because it did not induce fractions of estates. (*Holt*, C. J., 1 *Ld.* Raym. 622; Lord Chancellor, 1 Ves. sen. 13; 12 Car. 2, c. 24.)

And now, for the purpose of limitation, it is much more facilitous than a tenancy in common, unless cross-remainders are expressed or implied. There are other advantages derivable from a joint-tenancy, which may be hereafter observed. Suffice it to say, that the law itself adopts it in some cases, as in the cases of executors, assignees in bankruptcy, and others, though they differ in some respects from a simple joint-tenancy. (2 Eden, 333.)

#### Sect. 2.

1.—To create joint-tenancy the *same interest* must be given to the parties.

As to the nature of the interest:—Property which may be held in severalty may be held in joint-tenancy or tenancy in common generally; but in coparcenary heritable property only. In the former, therefore, estates of any quantity or length of duration, and personal property of any description, down to choses in action

and contracts, and as to real estate, whether vested, in possession, reversion, remainder, contingency, expectancy, or in right, may be held in joint-tenancy. (2 Com. 37, 102, 188; Thos. Co. Litt. 163*a*; Watkins's Conv. 8 ed. 96, 101; F. C. R. 310; 11 Mod. 108; *Tucker-man v. Jefferies*, Holt. Rep. 370; Co. Litt. 181*b*, 182*a*; 2 M. & Sel. 76; 7 Bing. 337; 14 Vin. Ab. 472; 3 Salk. 74, 205.)

If it is not sufficiently conclusive from what is said by Sir Edward Coke and Mr. Hargrave, that Littleton allows of a joint-tenancy in fee simple, it may be visibly apparent in sect. 280, where it is said, "of whom the survivor shall have the whole in fee simple," &c. (Co. Litt. 180*a*, and note; Litt. s. 277, 280.)

The mention of "their heirs" appears to have been regarded with too much strictness. It means not a strict limitation, but that the estate is to be absolute. (4 Bac. Ab. Guill. ed. 492.)

A limitation to two men or two women, and the heirs of their bodies (*per formam doni*), is different. There there are two distinct inheritances in either case, and not the same; and *lex spectat naturæ ordinem*. As Littleton says, "the law gives to them such an estate as is reasonable, according to the form of the gift; viz. to the heirs which the one shall beget of his body by any wife, and so of the other, and therefore by necessity of reason they have several inheritances." But the donees have a joint estate for life. (2 Com. 188; vide 2 Stra. 12; 2 Vern. 645, and *infra*; Litt. s. 283; Co. Litt. 133*b*.)

Husband and wife are but one person in law. An estate to them and the heirs of their bodies, or the heirs of the body of the husband or the wife, &c. give respectively but one estate tail. (*Vide Robinson v. Wharrey*, 2 Sir W. Black. 728; S. C. 1 Wils. 125, 154,) *et infra*.

II.—Among joint-tenants an identity of interest is required: so of coparceners. But tenants in common do not require an unity of interest: one may have a fee simple; another an estate tail; and a third for years, in the common property. Whereas a freehold cannot stand in jointure with a term of years; nor an estate in fee simple with one in tail. But, as to the land itself, joint-tenancy differs from coparcenary, for the latter may have unequal shares therein, as a daughter and two grand-daughters taking in right of a deceased daughter. (2 Com. 187; 2 Prest. Abst. 68; Litt. s. 241, 313; Co. Litt. 187*a*; Thos. n. to 165*b*, 180*b*.)

Lord Hardwicke has remarked, that though an estate in common may be held by unequal shares, yet it cannot be by uncertain shares; and this was lately solemnly decided: for that it is essential that it should appear on the face of the instrument creating it what the specific interest of each tenant is, as appears by the various writs giving remedies to tenants in common, all of which define the shares intended to be recovered. The question arose on a devise of so much property to A. as the man she should marry possessed, and no more. (*Jones v. Hancock*, 4 Dowl. 145, *Gibbs*, C. J.)

It has been also held, that a contract for a tenancy in common is so entire that a Court of Equity will not decree a specific performance as to one moiety, a decree being improper as to the other. (*Attorney General v. Day*, Suppl. by Belt, Ves. sen. 121.)

A limitation to two and the heirs or heirs of the body of one of them, creates a joint-tenancy for life. We shall have occasion hereafter to notice this kind of limitation.

The late statute abolishing real actions (3 & 4 W. 4, c. 27) must render more easy the question as to where there is a joint-tenancy of a right.

It is very clear that there may be a joint-tenancy of a right: as if two joint-tenants be disseised and one dies, the survivor shall have the whole right to the tenancy. (14 Vin. Ab. 476, 524; Bro. Joint-tenants, pl. 13; 4 Com. Dig. Estates, 65; 8 Rep. 85; Litt. s. 630.)

Sir Edward Coke lays it down that a right of action and a right of entry may stand in jointure, the parties being able to join in a writ of right. (Co. Litt. 187*b*, 237*b*; Thos. note to 188*a*; 14 Vin. Ab. 509.)

But a right of action and a bare right of entry cannot stand in jointure with a freehold and inheritance in possession. (Co. Litt. 367*a*, 337*a* & *b*.)

That a reversion on a freehold cannot stand in jointure with a freehold and inheritance in possession: as if tenant for life grant his estate to one of two joint-tenants reversioners. (Co. Litt. 367*a*, 337*a*—*b*, 183*a*, Harg. n. 62, and 192*b*; *Wiscot's case*, 2 Rep. 60.)

If one of two joint-tenants of a rent disseise the tenant, it is a severance of the jointure at the time, for the moiety of the rent is suspended by the unity of possession, and cannot stand in jointure with the other moiety; and it is a rule that *nihil de re accrescit ei qui nihil in re quando jus accresceret habet*. (Co. Litt. 187*b*, 188*a*.)

Further, that in all cases where the joint-tenants pursue one joint remedy, and one is summoned and severed and the other recovers, he that is severed shall enter with him; otherwise where the remedies are several. (Co. Litt. 187*b*, 188*a*, and 299*b*.)

The same accruer of right in cases of joint-tenancy in chattels real or personal holds place. (Co. Litt. 182*a*.) R. C. S.

[To be continued.]

## SUPERIOR COURTS.

### Lord Chancellor's Court.

#### PRACTICE.—LEAVE TO AMEND.—LACHES.

*The Court will not give leave to amend his bill to a plaintiff who has not taken any step in the prosecution of his suit for an unreasonable length of time after answers put in, and can give no satisfactory explanation of the delay.*

Mr. Monro moved to discharge an order of the Vice Chancellor, giving the plaintiff leave

to amend his bill under the following circumstances: The bill was filed in 1836 against three defendants, two of whom put in their answers in January, 1837. The plaintiff's present solicitor knew well what was contained in these answers, for it was he that prepared one of them. The answers were acquiesced in, and no step was taken in the prosecution of the suit until last March, when the plaintiff gave notice of an application for leave to amend his bill. That application was made to Master *Lynch*, who declined to grant it, conceiving, as the fact was, that he had no jurisdiction. There was a motion last February for production of documents, and it was not then stated that it became necessary to amend the bill. It was now alleged that the amendments were consequent upon the inspection of the documents; but the affidavits did not state that the amendments became necessary by reason of any thing in the documents. The solicitor states that the amendments were engrossed long since, but his conducting clerk having left him, they lay neglected in the office on that account. There is no ground for this indulgence. The only case bearing on this subject is *Walmesley v. Froude*,<sup>a</sup> and that is in our favor.

Mr. *Wigram* for the plaintiff.—The only question is, whether the plaintiff is to be allowed to proceed with the existing suit, or to be driven to file a new bill, which he must do if this application be granted. The *Vice Chancellor* thought it better to allow the existing suit to go on. It is true that two of the defendants put in their answers two years ago; but they never took any steps to dismiss the bill for want of prosecution. There was neglect on both sides. The plaintiff took up the suit in the stage in which it had been left since January 1837. The plaintiff sufficiently explained the cause of the delay on his part. Mr. *Raphael*, his first solicitor, died, and his present solicitor after making himself acquainted with the state of the cause by reading and examining very voluminous papers, caused a motion to be made last February for the production of documents referred to in the answers, which were ordered and produced accordingly in the Master's office. There the solicitor had to go to peruse these documents, from which he discovered good grounds for amending the bill.

The *Lord Chancellor*.—Why was the cause allowed to sleep from January 1837, when the two answers put in were acquiesced in? What is to become of the 13th of the general orders?

Mr. *Wigram*.—The Court has a discretion to dispense with the strict letter of the new orders, according to circumstances. The defendants did not take this objection when the plaintiffs moved for the production of the documents. They required some time to examine them in order to see what amendments ought to be made. No time was lost since; so that there was no ground for this objection now that did not exist then. There was no

replication in this case, so that *Walmesley v. Froude* does not apply. The delay for two years was common to both sides. The plaintiff is not able to explain, because his solicitor died. All the parties are poor, and it will be highly inconvenient if they must begin a new suit.

The *Lord Chancellor*.—These cases depend upon the circumstances of each case. The orders and rules of Court are not to be dispensed with, even by the Court, without cogent reason. It is the duty of solicitors to be diligent in the prosecution of their cases: and the object of the new orders was mainly to keep them to their duty, and to prevent the ruinous delay to which parties were subject. The 13th new order is peremptory, not to be dispensed with by the master; and for that reason application is made here to the discretion of the Court to dispense with the exigency of the order. I find this bill was filed in 1836; two of the defendants put in their answers in January 1837; and up to February 1839 the cause is allowed to sleep without one word of explanation of the cause of delay. It is no excuse for the plaintiff's delay that the defendants took no steps. That is a circumstance that may affect the costs, but the practice of the Court will not permit this delay, which is not explained in the affidavits. The answer of the third defendant may have been kept back for the purpose of this application. It is incumbent on the Court to protect and enforce the general orders regulating the practice of the Court. If I were to grant this application, I should be destroying the orders.

*Altree v. Horden and others*. Sittings at Lincoln's Inn, August 8th, 1839.

#### Queen's Bench.

##### [Before the Four Judges.]

#### HUSBAND AND WIFE.—CHATELS REAL.—JOINDER OF PARTIES.

*Where a husband is possessed of a term of years in right of his wife, he may bring ejectment against the under-tenant either in his own name or jointly with his wife.*

Mr. *Platt* moved for a rule to shew cause why the verdict given for the plaintiff in this case should not be set aside and a nonsuit entered. This was an action of ejectment, and was tried before *Lord Denman* at Westminster at the sittings after Easter Term. The demise in the declaration was laid on the 10th of September 1836, and possession was claimed on the ground of a forfeiture for not insuring and not repairing. The lessor of the plaintiff claimed title as being possessed of the reversion under several mesne demises from the original lessee of the term. In 1786 a lease was granted by J. White to Evans and Timmins. In September of the same year they let to one Shepherd for the whole of the term, wanting ten days, and then on the 11th of November 1789 they assigned the reversion to one George Pilbeam. On the 20th of De-

<sup>a</sup> Russ. & Myl. 334.

ember 1823 probate was granted of his will, by which he devised to his widow the reversion of the premises in question. In February 1824 the widow made a will, devising the property to her daughter. The daughter was the wife of the plaintiff Penfold, and he was appointed under the mother's will sole executor. The objection to the form of stating the demise was, that it was laid as in him alone, whereas the wife ought to have been joined; since what title he possessed was so possessed by him in right of his wife. When that objection was taken at the trial the lessor of the plaintiff in order to meet it proved a deed poll by Mrs. Pilbeam, in which she gave to W. Penfold, but nevertheless in trust for his wife and not subject to his debts, all and singular the goods, chattels, plate, jewels, leases, money in the funds &c., then belonging to her the donor. It was then submitted that that deed did not get rid of the objection, for that even by that deed he did not derive title in himself except through his wife. [Mr. Justice *Patteson*.—Why not? The interest left to his wife was a chattel interest, which he had a right to take into his own hands, and he has exercised his right.] [Mr. Justice *Littledale*.—In *Co. Litt.*,<sup>a</sup> it is said, "so the husband in his lifetime may dispose of all the wife's interest by grant or demise. So if he recover them in his own name, it is a disposition of the property." That shews that he may recover chattels real belonging to the wife in his own name.] But Bacon's Abridgment<sup>b</sup> shews that where husband and wife are joint tenants of a term, they must join in ejectment, for this is something which would survive to the wife. Mr. Justice *Patteson*.—They may join, but need not; if they do, the declaration will not be bad on that account, nor will it if they do not.]

*Per Cur.*—There is no ground for this application. The husband can maintain the action in his own name, though the right to maintain would, if he were dead, survive to the wife.

Rule refused.—*Doe d. Penfold v. Conway*, T. T. 1839. Q. B. F. J.

#### APPRAISEMENT.—STAMP ACTS.—RIGHT OF ACTION.

*An appraiser may maintain an action for work and labour in preparing an appraisal, although he has not delivered the appraisal within fourteen days after making the same, according to the provisions of the 46 Geo. 3, c. 43, s. 8.*

This was an action for work, labour, and materials in preparing an appraisal. The plea stated that before the defendant became indebted to the plaintiff in the sum mentioned in the declaration, the plaintiff was an appraiser, and that the plaintiff sought to recover the sum stated for appraising some property at his re-

quest, and that the plaintiff did not make an appraisal in writing, &c., and did not deliver the same within fourteen days after making the same, according to the provisions of the statute.<sup>a</sup> There was a special demurrer to this plea.

Mr. *Smirke*, in support of the demurrer.—The plea here is clearly bad, because it puts forward the non-delivery of the appraisal within fourteen days as a substantive defence to the action. There is nothing which makes the delivery within that period a condition precedent to the right of suing. The statute directs the delivery within that time, but it does not go on to say that unless such delivery is made the party making the appraisal shall not recover for his labour. The party omitting to conform to the provisions of the statute is merely liable to a penalty. The provision is not intended for the protection of the employer, but solely for that of the revenue. That appears clearly from the 9th section, which makes the person paying for an appraisal not duly stamped liable to a penalty of 20*l*. But that section does not refer to the delivery within fourteen days, which shews how much a mere matter of regulation that part of the former provision must be deemed. In all cases of this kind the Courts have held that the imposing a penalty for doing or not doing a certain thing was independent of the right of action to which the person who did it or left it undone might be entitled.

Mr. *Henderson*, in support of the plea.—The argument on the other side amounts to this, that if the appraisal is delivered at all it makes no difference whether it is delivered within the fourteen days or not, but that the action is at all events maintainable after any delivery has taken place. That argument cannot be maintained. The whole of the 8th section must be taken together. The duly stamping is there one of several things required to be done. But it is no more required than is the delivery within fourteen days. There is not in that section any distinction whatever between them. If therefore, as it is admitted, the want of a proper stamp would prevent the plaintiff from recovering, so will the non-

<sup>a</sup> 46 Geo. 3, c. 43, s. 8, by which it is enacted, "that every appraiser shall set down, &c. every appraisal made by him or any person for him, and the full amount thereof, and within fourteen days after the making thereof deliver the same to his employer so written, &c., duly stamped according to the provisions of this act, on pain of forfeiting for any neglect therein, or for delivering any appraisal, &c. not duly stamped as aforesaid, the sum of 50*l*."

Sect. 9 enacts, "that no person who shall employ any appraiser to make any appraisal shall make any compensation for any such appraisal unless the same shall be written on paper, &c., duly stamped, on pain of forfeiting 20*l*."

<sup>a</sup> Co. Litt. 351, a.

<sup>b</sup> Tit. Baron & Feme, c. 2.



delivery within the limited time. Both things are equally directed by the statute. They are imperatively required by its provisions, which in fact make them conditions precedent to the right of action. This is shewn by the 9th section, which actually makes the person paying for an improperly stamped appraisement liable to a penalty. There is no distinction of the sort now set up between the consequences of disobedience to the provisions of the revenue laws and the provisions of any other statutes. The supposed distinction is founded on the case of *Brown v. Duncan*,<sup>b</sup> but that case was explained and restricted, if not overruled, in *Cope v. Rowlands*,<sup>c</sup> in which the decision was altogether made to depend on the question whether the statute was meant to prohibit the contract. It is meant to do so here. This last case revived the doctrine which had been long previously laid down in *Bensley v. Bignold*,<sup>d</sup> where it was held that if a statute directed a thing to be done it must be done, or the right of action would not exist. A printer was there prohibited from recovering for work or materials because he had not affixed his name to a pamphlet, pursuant to the 39 Geo. 3, c. 79. [Lord Denman, C. J.—There the printing it without the name was an illegal act in itself.] So it is contended here that the delivery of the appraisement after the fourteen days was an illegal act. [Mr. Justice Patteson.—Does that alone make it illegal? The stamp is to be put on when it is written, but may not the acts authorising the subsequent stamping of instruments apply? and may not this instrument be stamped at any time? and then may not the provisions as to its delivery apply to the fourteen days after stamping?] That cannot be so, for the different parts of this section are all connected together. Even if there was a penalty specifically attached to the non-delivery within fourteen days, the loss of the right of action would not thereby be supplied. The principle is thus broadly stated by Mr. Justice Bayley, in *Bensley v. Bignold*: "Where a provision is enacted for public purposes, I think that it makes no difference whether a thing be prohibited absolutely or only under a penalty. The public have an interest that the thing shall not be done." It is clear that in this case the law, with a view to protect the public, required certain things to be done, and its directions not having been complied with, this action is not maintainable, and the plea is therefore good.

Mr. Smirke, in reply.—This sort of case seems to have been expressly described by Mr. Baron Parke, in delivering the judgment of the Court in *Cope v. Rowlands*, where his Lordship said,<sup>e</sup> "In *Brown v. Duncan* and *Wetherell v. Jones*,<sup>f</sup> both cases of violation of the revenue laws, the particular contract sued on was held not to be interdicted;" and he

afterwards spoke of "a regulation attaching to the plaintiff personally and affecting him with the penalty for the purpose only of securing the duty," as something distinct from the prohibition of any thing for the purpose of public protection. The true rule for deciding this case is to be found in these observations. The provision here is a mere regulation affecting the plaintiff personally. He may be liable to a penalty, but there is nothing to deprive him of his right of action.

Lord Denman, C. J.—There is nothing in this statute to prohibit a man from recovering if he should not deliver the appraisement till after fourteen days have expired, though he may be liable to a penalty if he does not deliver it.

*Per Cur.*—Judgment for the plaintiff.—*Saunders v. Morgan*, T. T. 1839. Q. B. F. J.

### Exchequer of Pleas.

#### EJECTMENT.—DETERMINING TENANCY.—NOTICE TO QUIT.

*Where a motion is made that the tenant shall enter into the undertaking and recognizance referred to in 1 Geo. 4, c. 87, s. 1, the affidavit must shew that the tenancy was determined by a regular notice to quit.*

*Roberts* shewed cause against a rule obtained by *Martin*, calling upon the tenant to give the undertaking and enter into the recognizance mentioned in the statute 1 Geo. 4, c. 87, s. 1. An objection was taken to the affidavit that it did not shew a sufficient termination of the tenancy. It alleged that the tenancy was determined "by a certain notice to quit given to the said defendant."

*Parke, B.*—The affidavit is defective in not alleging the notice to be regular.

*Alderson, B.*—It would have been better if the time when the notice was given had been stated.

Rule discharged.—*Doe d. Topping v. Boust*, T. T. 1839. Excheq.

#### TRIAL BEFORE SHERIFF, AND EXECUTION IN VACATION.—SUGGESTION.

*A cause having been tried by writ of trial, and execution having issued in vacation: Held, that the defendant might apply in the ensuing term to enter a suggestion to deprive the plaintiff of costs, and that a previous order to stay proceedings was unnecessary.*

*Evans* shewed cause against a rule obtained by *R. V. Richards*, to enter a suggestion on the roll to deprive the plaintiff of costs under the Bath Court of Requests Act (48 Geo. 3, c. xvii). It appeared that the cause had been tried on the 16th of May, and a verdict returned for the plaintiff. On the 18th final judgment was signed, and the present rule had been obtained on the 22d of the same month. It was submitted that the motion came too late. It

<sup>b</sup> 10 Barn. & Cres. 93.

<sup>c</sup> 2 Mee. & Wels.; 2 Gale, 231.

<sup>d</sup> 5 Barn. & Ald. 335.

<sup>e</sup> 2 Gale, 233. <sup>f</sup> 3 B. & Ald. 221.

was provided by the statute 3 & 4 W. 4, c. 43, s. 18, that at the return of any writ of trial costs should be taxed, judgment signed, and execution issued forthwith, unless the sheriff should certify under his hand, upon such writ, that judgment ought not to be signed until the defendant should have had an opportunity to apply to the Court for a new trial, or unless a Judge of any of the Courts should think fit to order that judgment or execution should be stayed until a day named. Here there was neither certificate nor order, and the plaintiff was entitled to sign judgment and issue execution forthwith. *Nicholls v. Chambers*, 1 C. M. & R. 385. The principle of *Baddley v. Oliver*, 1 D. P. C. 598, where it was laid down that where a Judge of Assize ordered that the plaintiff should have execution within a limited period, the defendant was not precluded by the fact of execution having issued, from applying to the Court in the next Term for liberty to enter a suggestion, was admitted, but it was urged that the case of a writ of trial was different, because the defendant might there apply to a Judge to stay the execution if he thought fit. Formerly, under the old practice, a suggestion could not be entered after final judgment. *Calvert v. Everard*, 5 M. & Sel. 510.

*Richards*, in support of the rule, contended that the old practice could not apply to such a case as the present, where the proceedings were under the Writ of Trial Act, because, if it did, the party would have no opportunity of making such an application as the present. Until the verdict was entered the defendant could not know whether the case fell within the Court of Requests Act or not.

Lord Abinger, C. B.—This rule must be made absolute. Trials before the sheriff are put on the same footing as trials *à nisi prius* by the 3 & 4 W. 4, c. 42, s. 18.

*Alderson*, B.—It has been already decided that a suggestion may be entered after execution, where it has taken place under a Judge's order; and I cannot see the distinction between that case and a case of a trial before the sheriff.

Rule absolute.—*Johnson v. Veal*, T. T. 1839. Excheq.

#### STATUTE OF FRAUDS.—SPECIAL PLEA.

*It is not necessary that a defence of no contract in writing, under the Statute of Frauds, shall be specially pleaded.*

*Martin* had obtained a rule in this case for setting aside the verdict which had been found for the plaintiff. It was an action of *assumpsit*, and the declaration stated that the plaintiff was possessed of a certain messuage or dwelling-house, situate, &c., held by him as tenant to one J. G. for the residue of a certain term of seven years, three of which remained unexpired, and that before the time of the agreement thereafter mentioned there were certain repairs necessary to be done in the said messuage, which the plaintiff was then about to

cause to be done; and therefore in consideration that the plaintiff, at the request of the defendant, would, on the completion of the said repairs, give up and relinquish possession of the said messuage and dwelling-house to the said defendant, and would suffer and permit him to become the tenant thereof for the unexpired residue of the said term; the defendant then promised the plaintiff to give 10*l.* towards the amount of dilapidations to be ascertained by a surveyor; the declaration then went on to allege that the plaintiff did relinquish and deliver up possession of the said dwelling-house to the defendant, and that the defendant entered into possession of the same, and became and was tenant thereof for the residue of the unexpired term, and that although the dilapidations were ascertained by a surveyor, yet that he refused to pay the 10*l.* The defendant pleaded the general issue—*non assumpsit*. At the trial, the plaintiff proved the agreement by parol testimony; but it was objected on the part of the defendant that the declaration disclosed a contract for an interest in land within the 4th section of the 29 Car. 2, c. 3, and that in order to render it valid there should be a memorandum or note in writing. A verdict having been found for the plaintiff, the present rule had been obtained.

*Platt* shewed cause, and contended that the defendant, by his pleading *non assumpsit* only had admitted the facts of his possession of the premises, and that the dilapidations were ascertained, and the only point therefore which remained for decision was that as to whether he had agreed to pay the 10*l.* The case therefore was clearly not within the Statute of Frauds. *Inman v. Stamp*, 1 Stark. 12, was in point.

*Martin*, contra.—This was a contract concerning an interest in land, within the 4th section of the Statute of Frauds, and the plaintiff was bound to prove a valid contract in writing. The whole of the agreement alleged by the declaration was put in issue by the plea.

*Parke*, B.—Supposing this to be a contract within the statute, is the defence available under the general issue?

*Martin*.—In *Elliott v. Thomas*, 3 M. & W. 170, it was admitted that the defence of no valid contract under the 17th section need not be pleaded.

*Parke*, B.—The provisions of the 17th and 4th sections are materially distinguishable.

*Martin*.—It was clearly intended by the statute that in order to charge a party with any contract within the 4th section, some written evidence should be produced. The cases of *Welford v. Beazeley*, 3 Atk. 503; *Whitchurch v. Bevis*, 2 B. & C. 559; *Coles v. Treothick*, 9 Ves. 234; *Jackson v. Lowe*, 1 Bing. 9; *Lilley v. Hewitt*, 11 Price, 594; *Lysaght v. Walker*, 5 Bligh, N. S. 1, were also in point.

Lord Abinger, C. B.—I think that this must be considered to be a contract for some interest in land within the meaning of the 4th section of the statute. At first I was inclined to think that it was a mere agreement to relinquish possession of the premises, but upon looking at the declaration, I find that the de-

fendant could not become tenant of the premises without a proper assignment. A surrender of the plaintiff's interest would not make him so. Then, as the statute requires that such a contract as this should be in writing, a question arises whether the defence set up is available under the plea here pleaded. The inclination of my opinion is that the defence need not be specially pleaded under the New Rules, but I will take time to consider that point.

*Parke, B.*—I am of the same opinion. The declaration is framed upon an executory contract, and under the plea of *non assumpsit* that must be proved. Under the terms of the contract, "that the plaintiff would suffer and permit the defendant to become tenant for the said residue of the term," the defendant could not become tenant without a regular assignment. The contract then is one for an interest in land, and ought to be in writing. As to the second point, in reference to the necessity of pleading the statute, I concur with the learned Chief Baron.

*Cur. adv. vult.*

*Parke, B.*, delivered the judgment of the Court at the Sittings after Term. The question here for consideration depends upon the construction to be put upon the New Rules; and the subject is one on which there has been considerable difference of opinion in the profession. No doubt, before the New Rules, such proof as is here contended should have been given would have been necessary, but the rule of H. T. 4 W. 4, (*Assumpsit*, 1 & 3,) having limited the operation of the plea of *non assumpsit* many allegations in the record are now admitted by that plea which formerly were required to be proved, and many matters of defence must now be pleaded specially which before that time might have been given in evidence under the general issue. Before those rules the plaintiff was bound under the plea of *non assumpsit* to prove all the material averments in his declaration, and the defendant was at liberty not merely to disprove the case set up, but to shew that the contract had since been broken or was void in law, or even that from subsequent circumstances all cause of action was at an end. The object of the New Rules was to remove those inconveniences, and with that view those relating to *assumpsit* restricted the general issue by limiting its operation in actions on a special contract to a denial of the promise, so as to exclude all defences in confession and avoidance. In the present case the question is, whether the memorandum in writing required by the 4th section of the Statute of Frauds, which was formerly a necessary part of the plaintiff's proof, is still so? The Court are of opinion that it is. Under the former state of things the plaintiff was bound to prove the existence of such a writing, and as it is necessary now to prove the same allegations as formerly, unless where altered by the New Rules, this allegation must still be considered as put in issue by the plea of *non assumpsit*, as there is nothing in the New Rules to alter the evidence required in a case

of this nature. It was contended that this defence ought to have been pleaded under the third rule, as shewing the contract to be void, or voidable in point of law. But we think the meaning of that rule is only to require certain matters on which the defendant means to rely, such as usury, fraud, and such like, to be specially pleaded, and does not interfere with the proof to be required in the first instance from the plaintiff. We therefore think that the writing required by the 4th section ought to have been produced in this case, and that the rule must be made absolute. The Courts have intimated an opinion that it might be necessary to prove a note in writing under the 17th section of the statute. The case of *Elliott v. Thomas* shews that where the Statute of Frauds requires a writing, such writing must be proved under the general issue.

Rule absolute.—*Batterman v. Hayes*, T. T. 1839. Excheq.

### THE EDITOR'S LETTER BOX.

We understand that the Colonial Courts require persons who wish to practise therein to be first admitted in one of the Superior Courts in England; and we presume that in order to act as a Notary Public the applicant must shew his faculty granted at Doctors' Commons.

We are somewhat in arrear with our correspondents, but must give the Law Statutes as early as practicable.

The work mentioned by a correspondent, containing opinions on Law Reporting, will be acceptable; and if he will favour us with it, the subject shall be noticed.

The *Legal Almanac, Remembrancer, and Diary* for 1840, the contents of which will be peculiarly adapted for the Profession, will be published in October.

The following works have lately been published by the Proprietors of the *Legal Observer*:

The Practical Man, or Pocket Companion for Solicitors, Valuers, and Owners of Property: comprising Precedents, Rules, Tables, Calculations, &c., in those Matters of Professional and General Business requiring attention when reference cannot be had to the Library. By Rolla Rouse, of the Middle Temple, Esq. Third Edition, with numerous and material additions. Price 7s. 6d. cloth.

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# The Legal Observer.

SATURDAY, SEPTEMBER 14, 1839.

— "Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## STATE OF CRIME IN THE PROVINCES.

WE now resume<sup>a</sup> the consideration of the Report of the Constabulary Force Committee, with reference to the state of crime in the provinces; and we shall enquire what protection there is for property conveyed by the highways.

We have seen that both life and property is in the present day but little endangered from open violence on the highway: but we shall shew that property is exposed on one great class of highways—canals, to systematised petty thefts, of great importance in the aggregate. We have great reason to think that a more lawless class of men do not exist than the canal boatmen; the causes being, the facility of committing crime, and the little danger of its being punished. We have now to prove these serious charges, as to which a great deal of evidence has been taken by the commissioners. The lines of canals are protected by no kind of police. Mr. Dowling, the Police Commissioner at Liverpool, says, "the bales are opened, boxes and cases are broken open and plundered, and it is so well done, that the discovery is almost a matter of impossibility, until they arrive at their destination," and this, where goods are exported abroad, may not be for six or eight months. "The packages that go abroad are packed by hydraulic presses, and so firm as to form an arch, so that the centre when drawn out, will not decrease the bulk of the whole." The seals are taken off and replenished. The pieces are taken out of the bales by a tackle fixed in the mast, and the

goods are drawn out of the centre of the bale, leaving an arch by which the bale appears complete. "This is done on the canal, where there are no houses near, and no persons present but the boatmen, and they all share in the plunder." All the great canal carriers corroborate this statement. "We are aware" says Messrs Kenworthy, "that there has been for a number of years a system of very small depredations—pilferages that it is almost impossible for us, or for the owners of the goods to detect." "We are also aware that there are people who do receive these things from the boatmen." "Houses" say the Commissioners, "for the reception of stolen goods, on particular parts of lines of canals, were pointed out to us. It was evident that these houses could only be maintained by a considerable amount of plunder from the property conveyed by the canals." Messrs. Pickford, Kershaw, and Venn and Bull, all bear similar testimony. It does not matter what is conveyed: every species of goods is made to pay toll. "The depredators," says Mr. Pickford, "can pilfer from a bale of silk, almost, if not quite, without its being known. They can take out of a bale of silk just one hank, without undoing the stitches, which makes so very trifling a deviation in the weight, that you can scarcely detect it. Then with tea,—if they have a large lot of tea on board, they make just a little sort of break in the corner of the chest, and they take a handful out of one, and a handful out of another." But the most complete account is given by J. B., and J. C., two convicted depredators of this class.

"I was taught," says the former, "to pilfer by my fellow-boatmen. They used to swear them not to split. *The whole crew were engaged in depredations.* I did as my companions did, and took goods of all sorts, which they sold to dif-

2 A

<sup>a</sup> See *ante*. p. 321.

ferent receivers on the canal. If we got one-half for it, we thought well; *the captain was the salesman*, and used to have two shares for his trouble and his risk, he having to make all deficiencies good." Afterwards this worthy, having received a legacy, "commenced business in the grocery line at Runcorn, and purchased frequently purloined property from boatmen. Many of the boatmen's wives used my shop, and got greatly in my debt. I durst not compel payment, for fear of their blowing me." I was now much given to drink, so was my wife. I failed, and had to begin boating again. When boating I always took a little of something every journey. "The highest sum I ever got was 25*l.* one trip. I never was apprehended before this time."

The other fellow, J. C., says—

"We had a borer for drawing sugar or dry goods. We slipped the hoop, made a small hole under it, and introduced the borer, and took whatever we liked. We eluded detection by the manner we made up our packages again. Sometimes the warehouseman thought a pack had been opened: we tipped him something and he would say nothing about it. The captain would keep a quantity of twine by him to suit the different packages we opened. When we took wine or spirits we knocked a hoop aside, and made a hole on one side for letting out the liquor, and on the other for letting in air: when we had taken what we wanted we put water in to make it up, and pegged up the hole, and replaced the hoop."

We have now, we think, sufficiently shewn the extensive nature of this kind of depredation. The great difficulty is to find a proper and effectual remedy. "The inhabitants at large" says Mr. Pickford, "having no interest in the suffering, and no loss from these robberies on the canals, take no precautions and give no aid in the prevention. On the contrary, they are rather beneficers than otherwise. They are not parties to the robbery, and they can buy from the receivers of stolen goods their spirits or tea at a less cost than they would if they bought it legally." What then is to be done? "Carriers of the class of those whose evidence we have cited," say the Commissioners, "might, for example, appoint watchmen to each boat, but we find no additional means that could be used to watch the watchman and prevent him from yielding to the action of constant temptations to the appetite, and becoming one of the gang and a protector to the plunderers." The Commissioners strongly deprecate all attempts at self-protection by forming a partial or local police—such as a police appointed by any particular railway company. They consider it to be in abrogation of the constitutional principle that the administra-

tion of justice and the prevention of crime belongs to the community at large, and forms the duty and business of the chief executive authority.

In this section of the Report much information is also given as to the extensive system of wrecking, which still prevails on some parts of the coast. We prefer dwelling on other portions of this interesting body of evidence, as being probably less within the knowledge of our readers. Some of the anecdotes given, are however, curiously illustrative of the confirmed habits of this class of depredators. "The greatest portion," says one witness, "are men calling themselves fishermen, but who in fact live by plundering wrecks. They intermarry and are nearly all related to each other. They are a most determined set of villains; it matters not what comes in their way, they will have it."

"On many occasions," says another, "where wrecks have taken place, he has known the produce of their plunder to have been openly hawked about for sale,—butter, 2*d.* to 3*d.* per lb.; rum, 4*s.* to 5*s.* per gallon; fine gown prints, 3*d.* to 4*d.* per yard, and many other articles in the same proportion; and the bodies of the drowned persons are almost invariably stripped of every thing valuable—money, watches, &c. About three or four years since the '*Grecian*,' Capt. Salisbury, was wrecked off the Cheshire coast. Captain Salisbury was drowned, and when his body was found, it was stripped of every thing, and whilst on the shore waiting to be conveyed to some house for holding an inquest, his finger was cut off to secure his ring. The body of a female was washed on shore, when a woman at Moreton, (a village in the neighbourhood) was proved to have bitten off the ears to obtain the earrings. An old stager at this sort of work, had contrived to get a puncheon of rum on shore, and with great caution had conveyed it to his dwelling, and placed it in his yard or garden, under some stale dung and other manure. He had flattered himself that it was perfectly secure, as not an individual but his own son had assisted him, or had the slightest knowledge of the theft or place of concealment. After a few days, finding every thing quiet, he resorted to his booty for the purpose of drawing some off for sale. The cask was safe in the position he had left it, but—'diamond cut diamond,'—the son had robbed his father of the rum in the night, and disposed of it to his own advantage."

Here we shall close the Report for the present, as our readers may think they have already "supped full of horrors," but we shall shortly return to it.

## PRACTICAL POINTS OF GENERAL INTEREST.

### EFFECT OF SEPARATION.

We very recently stated the law as to the liability of a husband after a separation, for the debts of his wife, (*ante*, p. 195). We now wish to mention another effect of such a separation. If a husband, by a deed of separation, executed by himself, although not executed by the trustees, gives his wife license to live where she pleases, he is not justified in entering the house of a third person to reclaim his wife as being improperly harboured there; and, the husband before doing so should at least give distinct notice to the third person, that as far as by law he could, he revoked the license. Lord *Denman*, C. J., has distinctly laid down this to be the law in a very recent case, *Lewis v. Ponsford*, 8 Car. & P. 687. But a private understanding or agreement between husband and wife to live separate, is not recognised by law. Per Sir *John Nichol*, in *Smyth v. Smyth*, 1 Hag. 514. And a deed of separation between husband and wife was held not to bind the wife surviving, nor to deprive her of her share in her husband's personal estate, to which she was entitled by the custom of the city of London. *Slater v. Slater*, 1 Y. & Col. 28. A deed of separation is rendered void by subsequent cohabitation. *Bateman v. Ross*, 1 Dow. 235; and the cases cited in 2 Leigh's N. P. 1123. But an express provision to the contrary is not illegal. As where a husband gave a bond to trustees, conditioned for payment of an annuity to his wife, and entered into a deed of separation which provided for her maintenance; and it was provided, that "if he and his wife should thereafter agree to live together again, such cohabitation should in no way alter the trusts created by the indenture." The defendant and his wife separated, and afterwards lived together for a time, and this fact was pleaded to an action by the trustees upon the annuity bond as avoiding that security; and it was held on demurrer that the reconciliation was no bar to an action on the bond, for there was nothing in the deed to shew that the parties intended that the trusts should be avoided in case of their again cohabiting, but the contrary. *Wilson v. Mushett*, 3 B. & Ad. 743.

## CHANGES IN THE LAW

IN THE LATE SESSION OF PARLIAMENT.

### No. X.

#### TITHE COMMUTATION.

2 & 3 Vict. c. 62.

*An act to explain and amend the acts for the Commutation of Tithes in England and Wales.* [17th August 1839.]

6 & 7 W. 4, c. 71. 1 Vict. c. 69. 1 & 2 Vict. c. 64. *On merger of tithes or rent charge, the charges thereon to be charges on lands.*—Whereas an act was passed in the seventh year of the reign of his late Majesty King William the Fourth, intituled "an Act for the Commutation of Tithes in England and Wales:" And whereas an act was passed in the first year of the reign of her present Majesty to amend the recited act: And whereas an act was passed in the second year of the reign of her present Majesty, intituled "An act to facilitate the Merger of Tithes in land:" And whereas it is expedient to explain and amend the said acts in certain respects: Be it therefore declared and enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that in every case where any tithes or rent charge shall have been or shall hereafter be released, assigned, or otherwise conveyed or disposed of under the provisions of the said acts, or any of them, or of this act, for merging or extinguishing the same, the lands in which such merger or extinguishment shall take effect shall be subject to any charge, incumbrance, or liability which lawfully existed on such tithes or rent charge previous to such merger to the extent of the value of such tithes or rent charge; and any such charge, incumbrance, or liability shall have priority over any charge or incumbrance existing on such lands at the time of such merger taking effect; and such lands, and the owners thereof for the time being shall be liable to the same remedies for the recovery of any payment and the performance of any duty in respect of such charge, incumbrance, or liability, or of any penalty or damages for non payment or non-performance thereof respectively, as the said tithes or rent charge, or the owner thereof for the time being, were or was liable to previous to such merger.

2. *Power for special apportionment of such charge on lands being of three times the value of the charge.*—And be it enacted, that every person entitled to exercise the powers for merger of tithes or rent charge in land under the said acts or any of them, or of this act, may with the consent of the tithe commissioners for the time being under their hands and seal of office, and of the person to whom the lands in which such merger or extinguishment shall

take effect shall belong, either by the deed or other instrument or declaration by which such merger shall be effected, or by any separate deed, instrument, or declaration, to be made in such form as the commissioners shall approve, specially apportion the whole or any part of any such charge, incumbrance, or liability affecting the said tithes or rent charge so merged or extinguished, or proposed to be merged or extinguished in such lands, upon the same or any part thereof, or upon any other lands of such person held under the same title and for the same estate in the same parish or upon the several closes or portions of such lands, or according to an acreable rate or rates upon lands of different quality, in such manner and proportion, and to the exclusion of such of them, as the person intending to merge the same, with such consent as aforesaid, may by any such deed, instrument, or declaration direct: provided always, that no land shall be so exclusively charged unless the value thereof shall in the opinion of the said commissioners be at least three times the value of the amount of the charge, incumbrance, or liability charged or intended to be charged thereon, over and above all other charges and incumbrances, if any, affecting the same.

3. *Name of each occupier, and sum charged on him, to be specified by assessor, on notice from owner.*—And be it enacted, that the assessor or collector of any rate or tax shall, within forty days after the receipt of a notice in writing, signed by any land owner or tithe owner interested therein, specify in his assessment made for the purpose of collecting and levying such rate or tax the names of the several occupiers of tithes, lands, and tenements subject to such rate or tax, as well as the sum assessed on the tithes, lands, or tenements held by each such occupier.

4. *Power of special apportionment on tithes or rent-charge.*—And be it enacted, that where the whole of the great tithes or the whole of the small tithes, or the respective rent-charges in lieu thereof, shall be lawfully subject to any such charge, incumbrance, or liability, and the person entitled to such tithes or rent-charge respectively shall be desirous of apportioning such charge, incumbrance, or liability respectively exclusively upon any part of such tithes or rent-charge, although such person has not the power or does not intend to merge the same under the said acts or this act, such person may, with the like consent of the said commissioners, and in such manner as they shall see fit and prescribe, and also with the consent of the bishop of the diocese, specially apportion such charge, incumbrance, or liability respectively upon any part or portion of the tithes or rent-charge respectively subject thereto, not being in the opinion of the said commissioners less than three times the value of the said charge, incumbrance, or liability, or of such part thereof as shall be so apportioned thereon, or intended so to be.

5. *Expenses of special apportionment to be borne by parties applying for same.*—And be it enacted, that in every such case of special

apportionment the costs and expences of or incident thereto shall be borne by the party at whose instance the same shall have been made, and shall be recoverable as other costs of apportionments are recoverable under the provisions of the said recited acts or either of them, or of this act.

6. *Tithes and rent-charge of glebe may be merged.*—And be it declared and enacted, that the provisions of the said acts and this act for merger or extinguishment of tithes or rent-charge instead of tithes in the lands out of which such tithes shall have been issuing, or whereon such rent-charge shall be fixed, do and shall extend to glebe or other land, in all cases where the same and the tithes or rent-charge thereof shall belong to the same person in virtue of his benefice, or of any dignity, office, or appointment held by him.

7. *Provision for deducting value of tithes and rent-charge from arbitrary fines in cases of merger in copyholds, 1 & 2 Vict. c. 64, s. 4.*—And be it enacted, that in every case of merger of tithes or rent-charge issuing out of land of copyhold tenure, and subject to arbitrary fine, it shall be lawful for the said commissioners, on the application of the owner of such land, to ascertain by such ways and means as they shall think fit, the annual value of the tithes or rent-charge so merged or intended to be merged; and the said commissioners shall in such case cause to be endorsed on the deed, declaration, or other instrument effecting such merger a certificate under their hands and seal, setting forth such annual value so ascertained; and in every case of future assessment of fine on the lands which before such merger were subject to such tithes or rent-charge, the parties entitled to such fine shall assess the same as if such lands were subject to the tithes or rent-charge of which the annual value shall be so endorsed; and the production of such deed, declaration, or instrument of merger, or of a duplicate thereof, with such certificate endorsed, or of an office copy of such deed, declaration, or instrument and certificate endorsed thereon, shall be sufficient evidence of the annual value of such tithes or rent-charge.

8. *Power to make award by way of supplement to parochial agreement in cases of fraud, &c.*—And be it enacted, that, notwithstanding any thing in the said acts or any of them contained, in any case where a parochial agreement for rent-charge or for giving land instead of tithes, or any compulsory award, has been duly confirmed by the said commissioners, and it shall appear to them, at any period before the confirmation of the apportionment of such rent-charge, that by reason of fraud, or by the omission or insertion through error of the tithes or lands of any party thereto, or of the name of any person, whether as tithe owner or land owner, who ought, or as the case may be, who ought not, to have been party thereto, or any other manifest error, that such agreement or award would be unjust, and that if such fraud, omission, insertion, or other manifest error had not occurred the said

commissioners would have come to a different conclusion in respect of such agreement or award, and would have declined to confirm, or would have varied the same previous to such confirmation, it shall be lawful for the said commissioners, if they shall see fit, and in their sole discretion, but not otherwise, by a separate award to rectify such agreement or award in any of the matters aforesaid, in such manner as to them shall seem just; and all the provisions and powers of the recited acts relating to compulsory awards shall be applied in every such case, in respect of the matter so dealt with, in as full a manner as if no such agreement or award had been made, or as if the same were made in respect of a separate district: Provided always, that in every such separate award the matter so dealt with, and the grounds on which the commissioners shall have seen fit to make the same, shall be recited or otherwise set forth in the draft thereof, in addition to the other particulars required by the said acts, or any of them, to be set forth in compulsory awards; and every such award shall, in the notice of meeting for hearing objections thereto, be called a separate award by way of supplement to the parochial agreement or award in the parish to which such separate award relates.

9. *Power after award to make parochial agreement for Easter offerings, &c.* 6 & 7 W. 4, c. 71, s. 90.—And be it enacted, that it shall be lawful, at any time before the confirmation of any apportionment after a compulsory award in any parish, for the land owners and tithe owners, having such interest in the lands and tithes of such parish as is required for the making a parochial agreement, to enter into a parochial agreement for the commutation of Easter offerings, mortuaries, or surplice fees, or of the tithes of fish or fishing, or mineral tithes; and all the provisions, conditions, limitations, and powers of the said recited acts or any of them, relating to parochial agreements, so far as the same shall in the judgment of the commissioners be applicable to the subject of the proposed commutation, shall be observed and applied in every such case as if no previous award had been made; and every such agreement may fix the period at which the rent-charge to be paid under such agreement shall commence, but so nevertheless that the same and the subsequent payments thereof shall be made on some day fixed for the payment of the rent-charge awarded in such parish, and shall be recoverable from time to time by the means provided in the said acts or either of them for the recovery of the rent-charges in the said parish.

10. *Power to fix commencement of rent-charge.*—And be it enacted, that it shall be lawful for the commissioners in any compulsory award, or by any supplementary award, in cases where the parties shall not have fixed the same by parochial agreement, as under the said secondly-recited act is provided, to fix, or where the commissioners shall not have so fixed, for the land owners and tithe owners

having such an interest in the land and tithes of any parish as is required for making a parochial agreement to enter into a supplementary agreement for fixing, such sum as to them respectively shall seem fit to be paid in consideration of the time (if any) which may intervene between the termination of any previous agreement or composition for the payment of tithe and the time at which the rent-charge shall commence, either under such compulsory award or parochial agreement where the same shall have been previously made, and also for the said commissioners by their said award to fix, or for the land owners and tithe owners having such interest in the lands and tithes of any parish as is required for the making a parochial agreement, at any time after such award, and before the confirmation of the apportionment, to enter into a supplementary agreement for fixing the period at which the rent-charge to be paid under such award shall commence, in like manner and subject in both cases to the like conditions as are provided in the secondly-recited act, enabling parties to agree to pay any such sum, or to fix the period at which any rent-charge shall commence.

11. *Fixed rent-charge may be substituted for contingent rent-charge on lands partially exempt.* 6 & 7 W. 4, c. 71, s. 71.—And be it enacted, that where lands are exempted from the payment of tithes, or of rent-charge instead of tithes, whilst in the occupation of the owner of such lands, by reason of having been parcel of the possessions of any privileged order, it shall be lawful for the respective owners of the said lands and tithes or rent-charge, by the parochial agreement for the rent-charge, or by a supplemental agreement in cases where the parochial agreements or any award shall have been confirmed by the said commissioners, to be made in such form as the commissioners shall direct or approve, to agree to the payment, or for the commissioners in the case of a compulsory award, with the consent of the respective owners of the said lands and tithes, to award the payment of a fixed and continuing rent-charge, without regard to the change of occupation or manurance of such lands, equivalent in value, according to the judgment of the commissioners, to such contingent rent-charge; and such lands shall, from the date of the confirmation by the commissioners of such parochial agreement or supplemental agreement or award, as the case may be, or from such date as shall be fixed by the parties, with the approval of the said commissioners, in any such agreement or supplemental agreement, be subject to such fixed rent-charge instead of the contingent tithes or rent-charge to which such lands were subject previous to such agreement or supplemental agreement or award being made; and every such fixed rent-charge shall from such period respectively be paid and recoverable by the means provided in the said acts, in like manner as if the same had been the rent-charge originally fixed in any parochial agreement or award in respect of the said tithes.

12. *Provisions of 6 & 7 W. 4, c. 71, ss. 43*



and 71, for substituting fixed rent-charge extended to crown lands.—And whereas certain crown lands, by reason of their lying of the tenure of ancient demesne or otherwise, are exempted from payment of tithes whilst in the tenure, occupation, or manurance of her Majesty, her tenants, farmers, or lessees, or their under-tenants, as the case may be, but become subject to tithes when aliened or occupied by subjects not being tenants, farmers, or lessees of the crown, and doubts have arisen how far the provisions of the said first-recited act relating to lands heretofore parcel of the possessions of any privileged order, or in the nature of glebe, or otherwise in like manner privileged and partially exempt, are applicable to such crown lands; be it declared and enacted, that all and every the said provisions of the said first-recited act do extend to such crown lands, and that the provision lastly in this act contained for substituting a fixed rent-charge instead of a contingent rent-charge on lands partially exempt from tithes shall extend and be applicable to such crown lands as aforesaid: Provided always, that no such fixed rent-charge shall be substituted instead of such contingent rent-charge on such crown lands without the consent of the persons or officers who are by the said first-recited act respectively required to be substituted in cases of commutation of tithes where the ownership of lands or tithes is vested in her Majesty.

13. *Provision for tithes of Lammas Lands, &c.*—And whereas large tracts of land called lammas lands are in the occupation of certain persons during a portion of the year only, and are liable to the tithes of the produce of the said lands increasing and growing thereon during such occupation, and at other portions of the year are in the occupation of other persons, and in their hands liable to different kinds of tithes arising from the agistment, produce or increase of cattle or stock thereon; and by reason of such change of occupation such last-mentioned tithes cannot be commuted for a rent-charge issuing out of or fixed upon the said lands, and the said recited acts are thereby rendered inoperative in the several parishes where such lammas lands lie; And whereas the said acts are in like manner inoperative in certain cases where a personal right of commonage, or a right of common in gross, is vested in certain persons by reason of inhabitancy or occupation in the parish where any common may lie, or by custom or vicinage, but without having such right of common so annexed or appurtenant to or arising out of or in respect of any lands on which any rent charge could be fixed instead of the tithes of the cattle or stock, or their produce, increase or

agistment, on such common, annexed to such personal right; for remedy thereof be it enacted, that in every case where by reason of the peculiar tenure of such lands, and the change during the year of the occupiers thereof, or of such right of commonage, a rent charge cannot, in the judgment of the said commissioners, be fixed on the said lands in respect of cattle and stock received and fed thereon, or of the produce and increase of such cattle and stock, at such portion of the year as the said lands are thrown open, or where such right of commonage alone exists, it shall be lawful for the parties interested in such lands or commons and the tithes thereof in the case of a parochial agreement, or for the commissioners in the case of a compulsory award, in every such parochial agreement, or award respectively, or by any supplemental agreement in the nature of a parochial agreement, or by a supplemental award, as the case may be, where any parochial agreement or award has been already made, to fix a rent-charge instead of the tithes of such lammas land or commons, to be paid during the separate occupation thereof by the separate occupiers, in like manner as other rent charges are fixed by the said acts or any of them, and to declare in such agreement or award, or supplemental agreement or award, as the case may be, such a sum or rate per head to be paid for each head of cattle or stock turned on to such lammas land or commons by the parties entitled to the occupation thereof after the same shall have been so thrown open, or by the parties entitled to such right of commonage as aforesaid; and every such sum shall be ascertained and fixed upon a calculation of the tithes received in respect of such last mentioned occupation or right for the period and according to the provisions for fixing rent-charges in the said recited acts, and shall be due and payable by the owner of such cattle or stock on the same being first turned upon such lands or commons, and shall be recoverable by the persons entitled thereto by distress and impounding of the cattle or stock in respect of which such sum shall be due, in like manner as cattle are distrained and impounded for rent, and be subject to the same provisions as to distress and replevin of the same as are by law provided in cases of distress for rent: provided always, that nothing herein contained shall extend to lammas lands where no tithes or payments instead of tithes have been taken during the seven years ending at Christmas one thousand eight hundred and thirty-five in respect of the cattle or stock received and fed thereon, or of the produce and increase of such cattle or stock at such portion of the year as the said lands are thrown open.

[To be continued.]

[We shall give some notes on the effect of this act in our next number. Ed.]

NOTICES OF NEW BOOKS.

*The Law relating to the Public Funds; and the Equitable and Legal Remedies with respect to Funded Property; including the Practice by Distringas, and under the Statute 1 & 2 Vict. c. 110, with References to the Cases on the Foreign Funds and Public Companies, and an Appendix of Forms.* By James John Wilkinson, Esq., of Gray's Inn. London: Saunders and Benning. 1839.

THIS is one of the most useful books that we have seen for a long time. The subject is of great importance,—that of the law relating to *eight hundred millions of stock* in the public funds,—and it has in all respects been treated by the author with great care, judgment, and learning.

It comprises—1. The origin of the funded system. 2. The British funds generally. 3. The particular British funds, with an historical account of the adoption of the three per cent. consolidated annuities, by the Court of Chancery and Exchequer in Equity, as the proper funds for suitors' monies and trust monies. 4. The Bank of England, and of the South Sea Company. 5. The Stock Exchange, and of the jobbers and stock-brokers. 6, 7, 8. The sale and transfer of stock. First, the vendor's possession; or the places and times of transfer, and of the power of attorney. Second, the contract; the broker's book, and entry; and proceedings with an unwilling seller and buyer. Third, the transfer and acceptance. 9. An historical account of stockjobbing, and its early history, and of the stockjobbing acts. 10. Stockjobbing, and on Sir John Barnard's act. 11. Stockjobbing in the foreign funds, and of policies and wagers respecting funds in general. 12. The dividends, and their apportionment, and of unclaimed dividends. 13. The remedies in equity in relation to stock;—first, by injunction, including the practice by *distringas*;—and, secondly, in other cases. 14. Executions in equity on stock, before the statute 1 & 2 Vict. c. 110. 15. The remedies at common law in relation to stock, and the limitation of action in such cases. 16. Executions upon stock at common law, and by way of charge, under the statute 1 & 2 Vict. c. 110. 17. The statute 1 & 2 Vict. c. 110, charging trust property, and of the history and law relating to executions on real and personal property subject to uses and trusts. 18. The practice in charging stock, under the stat. 1 & 2 Vict. c. 110. 19. The statutes 58 G. 3, c. 93; 3 & 4 W. 4, c. 98; 1 Vict. c. 80,

relaxing the severity of the laws relating to usury; and the enactment in progress for the same purpose (since passed.)

The Appendix comprises all the forms relating to the practice by *distringas*, and the charge under the statute 1 & 2 Vict. c. 110, viz.:

1. *Precipe* for *distringas* against the Bank of England.
2. *Distringas* against the Bank.
3. *Precipe* for *distringas* against the South Sea Company.
4. *Distringas* against the South Sea Company.
5. Notice under the *distringas* to the Bank.
6. Special notice to the Bank, with an exception of the dividends.
7. The like to the South Sea Company.
8. Order, after a *distringas* issued and no bill filed, that the Bank be dismissed with costs to be paid by the plaintiff.
9. Affidavit of judgment debt and of the defendant's right to stock in the funds, to ground order *nisi* to charge the stock under the stat. 1 & 2 Vict. c. 110.
10. Order *nisi* to charge stock standing in defendant's own name.
11. Order *nisi* to charge stock, part of other stock standing in the name of a trustee, in trust for the defendant.
12. Affidavit of service of order *nisi* on the Bank and on the defendant's attorney.
13. Affidavit of attendance at the judge's chambers under the order *nisi*, and default in the defendant and his attorney.
14. Order absolute to charge stock.
15. Order to discharge order *nisi* to charge stock, the debt, interest, and costs having been paid.

We think it due to Mr. Wilkinson to let him state, in his own words, the object he had in view in compiling the present work:

"The law relating to the Public Funds, now amounting in this country to upwards of eight hundred millions—a new subject for a law treatise has long occupied the Author's attention: in 1815, he had collected materials with a view to publication, and was then advised by one well acquainted with this branch of the law, to investigate the whole, and render the work as full and useful as possible. After a lapse of many years, the Author recommenced his labours, and consulted and arranged almost every case at law and in equity, connected with the Old Crown Annuities, and with the Public Funds, from the early part of the reign of William 3, to the present time; and he has been thus enabled to bring forward many cases, not mentioned in any treatise or abridgment—omissions which can only be accounted for as arising from the neglected state of the subject.

"When this laborious investigation had proceeded to a great length, the Author found that neither his health, leisure, nor proper attention to his professional duties, would allow him to prepare the whole law for publication;

but, although he resolved to select a part only of the subject, yet the general investigation of the whole was continued, and has necessarily contributed to make the part now respectfully offered to the public more complete.

"As connected with the remedies relating to funded property, it has been attempted in Chap. XIII., to detail, for the first time, the frequent and very beneficial practice of putting a Stop on Stock by *distringas*, and in Chaps. XVI., XVII., and XVIII., the provisions in the statute for the abolition of arrest on *mesne* process (1 & 2 Vict. c. 110, s. 14, 15, and 16) and proceedings under that statute, to charge the stock of a judgment debtor; and, in Chap. XIX., the statutes for the relaxation of usury, a subject of considerable interest at present—and the important cases regulating their construction; and also the statute 2 & 3 Vict., c. 37, extending the security of the creditor, have been considered.

"For the purpose of reference, a Table of the numerous cases cited is prefixed, and an Index has been subjoined.

"The Author is aware that there must be imperfections in a treatise upon a new subject, and upon recent enactments, and upon practice which has but partially been settled by decision; but he may be allowed to state, that no pains have been spared to render the work, in some measure at least, worthy the attention of the Profession to which he has the honour to belong, as well as of members of the great public bodies, and of the numerous individuals connected with the monied interests of this nation."

From the chapter relating to the practice in charging the stock of a judgment debtor, we extract the following, which forms, however, only a small portion of that important part of the work:

"In treating of the *practice* of charging the government funds, or the stock or shares of public companies, with debts and sums of money due on judgments, decrees, or rules of court, under the stat. 1 & 2 Vict. c. 110; the case of the government funds, subject to a judgment at law, will be first considered.

"It will probably be the practice to bring actions against stock-holders, with a view of eventually obtaining the debt and costs, by charging and obtaining satisfaction from the defendant's stock, under this act; and cases have already occurred of that description.

"In order to charge stock, the first requisite is a final judgment; this judgment should be entered up of record.

"Enquiry should be made concerning the defendant's stock intended to be charged; there will frequently be considerable difficulty in ascertaining what particular stock the judgment debtor is possessed of, and its precise amount; the defendant, or his attorney, will not afford any information upon the subject. Successful inquiries have, however, been made where a debtor has been possessed of trust stock under a will, the contents of which are easily ascertained by a search at the proper ec-

clesiastical registry. Inquiry may also be made of the trustees. The Bank and South Sea Company very prudently refuse to answer any questions, as to a particular amount of stock in their books, unless the applicant (who should be attended by his broker) can state the exact name and address of the stockholder, the very fund, and the sum, in pounds, shillings, and pence, in his name.

"It is always desirable to obtain the *exact* amount of the stock in the name of the defendant to be wholly or partially charged; or, if it be *trust stock*, the exact amount of the whole of that stock, whether the defendant be beneficially entitled to the whole absolutely, or to a part only, or have a life interest in the dividends of the whole, or of a part only; because, although the charge may be partial, the whole amount, as well as the part intended to be charged, must be stated in the order.

"It may sometimes be advisable to make inquiry, as to the price of the funds at the time of the application, in order to estimate what amount of stock should be charged with the judgment debt and interest (though it seems hardly necessary at present to state this in the affidavit). In one of the early cases on this act, in October 1838, a stop was, by a judge's order, put upon the whole amount of stock in the names of trustees, to a large amount, for the debt of one of the *cestui que trusts* amounting to a part only of the trust stock: to correct this, however, a summons was taken out before Alderson, B., who discharged the former order, and reduced the charge to a sum agreed to be equivalent to the probable amount of the judgment debt, and interest and costs; the practice by *distringas* requires, that the precise amount of stock standing in the debtor's or his trustee's name, and the amount to be charged, be correctly stated in the notice; under the statute, such amount of stock should, *if possible*, be obtained and sworn to; but where a special affidavit can be made, shewing that the defendant is possessed of some stock in a particular fund, or shares in a company, and that every enquiry and endeavour has been made (stating the facts) to ascertain the precise amount, &c. without success, an order *nisi* would probably be granted to charge such stock or shares as the defendant may be possessed of.

"An *affidavit* of the facts, entitled in the court where the action is, and also in the cause, must be made to ground the application, stating the judgment, that the same was entered up; that so much is due for principal and interest; and that a particular sum in the 3 per cent. consolidated annuities, or other stock or annuities, or other fund, is standing in the Bank or South Sea Company's books, in the name of the defendant or of his trustee, naming him. The affidavit will of course vary in each particular case.

"It would perhaps have tended to the regularity of the proceeding, if a summons had been taken out, and a *private* attendance with the judge arranged; but this would have much interfered with the time of the judges, op-

pressed as they are with business. The practice adopted is similar to that on an application made to a judge on a special affidavit for an order to arrest a defendant, on which occasion the plaintiff's attorney, without any summons, attends the judge with the affidavit, stating the facts, and the judge, when satisfied, makes the order applied for; and this practice is now adopted in obtaining an order *nisi* to charge stock.

"The judge may be a judge of any one of the superior courts at Westminster; but it is advisable to make the application at the chambers of one of the judges of the court in which the action has been brought, as there may be ulterior proceedings in the cause in that court, and the charge may be affected by issuing a *capias ad satisfaciendum*, or by a partial satisfaction; but as the judges, in courts of common law, can now act out of their own courts, the application may be safely made to any of those judges, both on the language of sect. 14, and on the previous statutes.

"It must frequently happen, that cases of difficulty will arise on these clauses, in which it will be impossible for the learned judge, in the present state of court business, either to read over the several affidavits, documents, and papers, or to decide immediately, and yet it may be very unsafe to leave the stock unprotected pending the decision; it will be a question of importance, therefore, whether the judge can issue a preliminary order, directing that no transfer shall take place until an order *nisi*, to be made in the particular cause, be made and served; but there is no direction in the Act to that effect. Will it be proper in such a case, for the plaintiff to issue a *distringas*, by which a temporary stop may be put upon the stock? Then another question arises from the conflict of jurisdictions, whether, after a *distringas* has been issued and acted upon in one court, there can be a charge under the statute on the same stock, for the same debt, in another court?

"The judge, on being attended by the attorney or agent of the judgment creditor, will hear the application, and, if satisfied, will make an order *nisi*, that the stock, funds, or annuities, or such part thereof as he shall think sufficient, shall stand provisionally charged with the payment of the amount of the judgment debt and interest; and that, unless cause be shewn to the contrary, on or before a fortnight, a month, or on or before a certain day, or as it is now usual, (as in a summons), on a certain day and at a certain hour, the order will be made absolute.

"Where the judgment debtor is entitled only to the dividends or income of stock, during life, it seems the order should charge the dividends only, without affecting the *corpus* of the stock, except by restraining such a transfer as may defeat the charge."

It will thus be perceived that Mr. Wilkinson has made an important addition to our stock of legal works, and that few members of either branch of the profession can neglect placing it in their libraries.

## THE LAW OF JOINT INTERESTS.

### CHAPTER I.

[Continued from page 363, ante.]

#### Sect. 3.

Joint-tenancy is created by the act of the party. It may be either by purchase or gift, or by purchase, in the technical sense of the word; and in this respect it resembles a tenancy in common. (2 Com. 180, 188; Litt. s. 321; Cro. Eliz. 431; 15 Ves. 365; 4 Russ. 384.)

But tenants in common may be by prescription: as prescribing for themselves and their ancestors that the estate has been held in common for a time which will make a good prescriptive title; but this can never be in the case of joint-tenants, because of the *jus accrescendi*. (Litt. s. 310; 3 & 4 W. 4, c. 71.)

I have not observed Littleton or Coke to mention any modes of creating a tenancy in common except the following three, *viz.*:—First, by the express words of the conveyance, or to two, *habendum* the one moiety to the one and his heirs, and the other moiety to the other and his heirs, &c.; or where a sole tenant in feoffo another of a moiety or other part of his land without giving it in severalty. Secondly, where, in creating an undivided estate, all the unities which are requisite in joint-tenancy or coparcenary are not observed. Thirdly, by prescription. (Litt. ss. 298, 299, and Comments; Lofft. 196; 2 Bac. Ab. Guill. ed. 603, and *infra*; 14 Vin. Ab. 491, *per* M. R.; Watk. Conv. 111, 8 ed.; 2 Com. 193.)

Partnerships may be dissolved into a tenancy in common, and are in some sort the same species of ownership; but of this hereafter. (2 Cowp. 445; 1 Dea. & Ch. 464.)

In wills greater latitude is allowed in constructing a tenancy in common than in a deed, as we shall hereafter mention.

Coparceners claim by act of law only, *viz.* by descent from their ancestor. (2 Com. 187.)

Where the Party-wall Act (14 Geo. 3, c. 78) does not apply, and no evidence or contradictory evidence is adduced to shew how it is built, it has been decided that the common user of a wall separating adjoining properties in different owners, is *prima facie* evidence that the wall and the land on which it stands belongs to the respective owners as tenants in common. (*Matts v. Hawkins*, 5 Taunt. 20; *Cubitt v. Porter*, 8 B. & C. 257; 2 M. & R. 267; *Wiltshire v. Sidford*, 1 M. & R. 404.)

As in sole ownerships so in undivided, a right of property may be obtained by the labour or skill of two or more individuals. Thus in the case of ship-building. So cases have occurred with respect to the whale-fisheries, with respect to the rights of the contending harpooners, but which appear to be subject to what is the generally received custom among the adventurers. The questions have originated interesting argument. (*Abbott on Shipping*, 1; *Fennings v. Littledale*, 1 Taunt.

241; *ibid.*, and *Littledale v. Scarth*, 1 Taunt. 243, n.; 1 M. & Malk. 58, 59.

Independently of the game laws and trespassing, the common law right to the hunters of animals, *feræ naturæ*, and the owner of the soil from or over which they are started or hunted, is laid down to depend on the continued pursuit of the hunter; for there is no claim, *ratione soli*, during the flight merely over a property. A distinction also has been made with respect to a forest or warren, which have a privilege. If the owner of the starting ground pursues, it seems not lawful for him to carry away, though he kill the animal. (2 Salk. 556; 1 Ld. Raym. 251; 2 Com. 419, and note by Christian.)

Where two extents issued into two different counties for the same debt, and both sheriffs seized the goods, and the debt was paid to one before a *venditioni exponas* was delivered to either, the latter was held entitled to the poundage. But where the debt was paid to the Receiver General, the Court thought the distinction too nice to inquire which levy had compelled payment, and therefore apportioned the poundage. (*Rex v. Barber*, 3 Anstr. 717; *R. v. Cadwall*, 299, *ib.*; *R. v. Fry*, 3 *ib.* 717.)

Property may be acquired by accident, as by finding: the rules respecting which are to be found in Blackstone's Commentaries. (2 Com. by Hov. 295; 2 *ib.* 9.)

The distinction is, however, to be borne in mind, that where two or more persons contribute their labour or skill for a common undertaking, subject to a common loss and gain, thereby the parties are partners. (18 Ves. 300; 4 B. & Ald. 663; 1 H. Blk. 37; 4 B. & C. 867, *Abbott*, C. J.)

It was the practice among the King's waiters in London, who were appointed by separate patents, to consider certain emoluments paid into an officer's hands for their benefit, as subject to an accruer in favour of the survivors in case of the death of others, unless the deceased received his share before his death. It was unnecessary to decide the legality of this, in consequence of the passing of a statute; but the Judges inclined against it, because the parties were not joint-officers. (*Hudson and others v. Mucklow*, 12 East, 273.)

There may be joint-tenants by a tortious act, as by ouster or usurpation, &c. of the rightful owner,—as well as sole tenants. On the death of one, the survivor shall have the whole right, whatever it is. (4 Bac. Ab., Guill. ed. 456; Co. Litt. 181a.)

Disseins are out of date now, and seldom can come in question, though, at one time, offering points of the utmost difficulty. (Hayes's Conv. 12; 2 Prest. Abst. 279.)

Adverse possession is now created by mere receipt of rent and profits; and almost all real actions are abolished: the right, and not only the remedy, is now barred. (3 & 4 W. 4, c. 27; *Nepean v. Knight*, 2 M. & W. 894.)

A joint disseisin might have been by a disseisin to the use of the disseisor and another, who either before or afterwards agreed—

*Omnis ratihabitiæ retrotrahitur et mandato acquiparatur*—or to the use of two, one agreeing at one time and another at another. The members of a corporation may be disseisors as individuals; but a man, by his entry, cannot make a feme covert or infant joint disseisors with him, from their incapacity to agree to it. (Co. Litt. s. 278, 108b, 374a; 2 Bac. Ab. 267; *Summe's case*, 13 Rep. 24; Co. Litt. 153, 161a & b, and note; 14 Vin. Ab. 209; 2 Bac. Ab. Guill. ed. 685, 688.)

But there might be coadjutors to a disseisin who gained nothing in the tenancy. (Co. Litt. s. 278, 180b; 2 Bac. Ab. 635.)

If there be two joint-tenants of land charged with a rent to a party, who, on the rent being behind, distrains for it, on which one of the joint-tenants makes rescous, both joint-tenants are disseisors, (but the rescuer only chargeable with force); for the distress is a demand in law, and the nonpayment a denial and a disseisin. (Co. Litt. 161b.) Joint trespassers gain no right, much less parties taking goods with a felonious intent.

#### Sect. 4.

Joint-tenancy may be created by any conveyance almost by which a sole ownership is created. It was objected, at one time, that it could not be created in fee simple by a fine *sur con. de droit come con.*, for that fine was levied for the purpose of settling the inheritance in a person certain. But the practice introduced many anomalies and absurdities. Fines are now abolished. (Litt. s. 277; Co. Litt. 180b; 4 Jarm. Byth. 164; 2 Rep. 74; Bro. Rep. 5; 5 Rep. 58; 4 Bac. Ab. 460; 3 *ib.* 643; 1 Prest. Conv. 288; 2 *ib.* 90, 4; 2 Mod. 49.)

Joint-tenants (differing from tenants in common) must be created by the same conveyance or claim, and the property pass to them *in soluto*. They must have a unity of title; whereas one tenant in common may take by descent and another by purchase, or both by purchase from different parties. (2 Com. 191; Co. Litt. 188b, 189a; Watk. Con. 111; Gilb. Ten. 74; 1 Salk. 309.)

But property cannot be granted to two or more jointly and severally, for severally will be repugnant, and they are joint-tenants. Though it is said, that to grant *proximam advocatiam*, to two, *et cuilibet eorum*, to present A., is good, for the maxim *cupido divitiarum est causa belli*, does not apply. But it is very clear that a mere authority may be given to two jointly and severally. (5 Rep. 19; 1 Salk. 309; 14 Vin. Ab. 147, 469; Moor, 64; 4 Cru. Dig. 396; *Shaw v. Sherwood*, Cro. Eliz. 729; 5 Bac. Ab. Guill. ed. 810; 3 Jarm. Byth. 180; 1 East, 497, *Kenyon*, C. J.)

Partners and executors cannot be said to be possessed jointly and severally, though each partner or executor respectively may dispose of the whole in some cases.

It is even laid down that in a will a gift to two jointly and severally creates a joint-tenancy. (2 Com. 193; Poph. 52.)

The reason in *Slingsby's case* is, that though

several may bind themselves jointly and severally to a party for the same cause, yet a party cannot bind himself to several and each of them for one and the same cause, for the Court would be at a loss for which to give judgment. (*Slingsby's case*, 5 Rep. 19; 1 East, 497. *Kenyon*, C. J.)

The subject-matter in a joint grant may, it appears, render it a several grant to each grantee, as a personal corody uncertain to two men and their heirs. Coparceners may claim the entire property by the same descent from their parent, or they may be such by several descents after the original descents; but however many there be, and however many descents may happen while the coparcenary continues, they are but one heir to their common ancestor, from whom the land descended originally: though the subsequent descents pass unequal shares of the entirety. The law gives to the original coparceners, as to their respective shares, a descendable property: *Potentior est dispositio legis quam homini*. (Co. Litt. 190 a, Harg. n. 74.)

Executors, by the common law, and assignees in bankruptcy, by statute law, have the effects vested in them by mere appointment. (Toller's Executors, 1; and 2 W. 4, c. 56, ss. 25 & 26.) R. C. S.

[To be continued.]

## LAW OF ATTORNEYS.

### EXAMINATION.

In the following case it is said "the Examiners of Attorneys, under Reg. Gen. H. T. 6 W. 4, ought not to refuse to examine a clerk, upon the ground that there is a doubt whether he has served his whole time under his articles."

*Kelly*, Q. C., moved that the parties appointed to examine persons desirous of being admitted attorneys, pursuant to the regulations of Hil. 6 W. 4, (1 Har. & Wol. 637,) might be directed to examine the applicant, they having refused to do so under the following circumstances:—The applicant had been articled to an attorney for five years; during that period he had been assigned to another attorney, whom he served for a fortnight before the instrument of assignment was executed. It was submitted that such fortnight's service was, in effect, a service under the assignment.

*Tindal*, C. J.—Without giving any opinion as to the validity of the service, we think that the applicant should be put in a situation to have the question determined. The Examiners, therefore, ought to examine him *de bene esse*, and then if the applicant is refused his certificate, he may appeal to the Judges, and the question as to the sufficiency of the service will be properly raised.

In *re Smithers*, 1 Arnold, 423.

We think there must be a mistake in the name of this case. It appears to be one of the cases which we noticed Vol. 17, p. 53.

## SELECTIONS FROM CORRESPONDENCE.

### LAW REPORTING.

To the Editor of the Legal Observer.

Sir,

I AM glad to see by the letter of "Digester," *ante*, p. 331, and other correspondents, that the profession is desirous of abating the nuisance of the present system of Law Reporting. The remedy is suggested by your correspondent, and is in the hands of the profession—it is simply to *discontinue taking in any reports* until the booksellers have agreed to drop their rivalry, and publish only one series of cases in each court instead of two or three as at present. This would not only be better for us, but better for the booksellers in the long run.

I hope you will continue your exertions in this matter, and that your subscribers, the next time they pay their bills, will remember this suggestion. Why is not some step taken by the legislature to introduce authorized reports?

ALPHA.

### DUTIES OF SOLICITORS TO THEIR ARTICLED CLERKS.

Sir,

NOTICING in a recent number of the Legal Observer, a letter complaining of the manner in which solicitors perform their covenants towards their articled clerks, and your answer thereto, saying "that if the covenants of the solicitor are not always strictly performed, those of the clerk are in an equal degree unfulfilled:" I beg to say that I do not consider that any justification; for if the clerk does not perform his covenants, the solicitor, having the power of withholding his certificate at the end of the term, would do so, if he considered that the clerk had not strictly acted up to his agreement, whilst the unfortunate clerk has not only got to work like a copying clerk for the greater part of five years, but at the end of that time has to pass a very strict examination, for which, in a great many instances, he has to prepare after the expiration of his articles.

I hope that these frequent complaints may touch the consciences of those whom they may concern, and thereby open their eyes to a just view of the case. They may learn that there is something more due to the clerk, in consideration of the large premium, besides teaching him to read and write.

HUGO.

## SUPERIOR COURTS.

## Rolls.

## DEBTOR AND CREDITOR.—LIABILITY OF EXECUTOR.

*Circumstances in which the Court dismissed so much of a bill as asked to set aside a deed by which a creditor obtained from his debtor security for payment on the death of the debtor, but ordered the creditor to account for the debtor's estate which came into his hands by procuring administration of the estate to be granted to himself, he thereby becoming a trustee for the other creditors.*

This suit was instituted by James Link, a simple-contract creditor of Thomas Bennett, deceased, against William Stallard, the deceased's personal representative, and other defendants, praying the usual accounts of Bennett's estate, and that a deed executed by him to Stallard, conveying to the latter a farm in Herefordshire, and other property, might be set aside.

The case was argued for the greater part of three days by Mr. *Kindersley* with other counsel for the plaintiff, and by Mr. *Pemberton*, with other counsel, for the defendants. The facts on which the arguments and questions in dispute turned are fully stated in the subjoined judgment.

Lord Langdale, M. R.—This was a bill filed by a simple contract creditor of T. Bennett, deceased, who had not been paid, and who had a clear right to an account of the estate of his debtor. The defendant Stallard, was Bennett's legal personal representative, and was liable to the account; and if nothing else but an account and payment were sought, it would be a case of ordinary occurrence; but the plaintiff had included several transactions between the defendant and the testator in his lifetime, and particularly a transaction in 1833, which the bill alleged, put an end to a debt to Stallard from Bennett. It appeared that they had been intimately acquainted from early life, and that Stallard, who had been a prosperous man, had made several accommodations to Bennett. In 1824, Bennett had obtained an agreement for a lease for 14 years, of the Brockhampton Farm, at a rent of 1*l.* per acre. The first evidence of any debt due from Bennett to Stallard, was a warrant of attorney dated January, 1827, to secure 3600*l.* That debt was afterwards increased. The family of the Protheroes were owners of Brockhampton Farm, which they were desirous of selling, and it was offered for sale as one property by one Collins as the mutual agent of all the owners, but he was not to sell for less than 30*l.* an acre. Collins asked 35*l.* an acre; Bennett, the tenant and occupier, wished to become the purchaser, but the Protheroes were not willing to sell to him, as the farm consisted of 556 acres, and they doubted his ability to pay the purchase money, on which he applied to Stallard, through one Bird. Stallard gave Bird leave to make what use he pleased of his name, and Bird thought he had authority to enter into

a contract for Stallard. On the 3rd of June, 1831, the Protheroes agreed with Bird to sell the farm to Bennett and Stallard at 32*l.* 10*s.* per acre. Bennett thought he had made a profitable purchase, and was well pleased to enter into the contract. Stallard, who was to advance the purchase-money, thought differently, and reproached Bird for going too far, but admitted himself to be bound. Bennett immediately began endeavouring to sell the estate again, and requested Stallard to assist him in the resale, but Stallard was not so confident. On the 15th of August, they came to an agreement that Bennett should have to the end of January then next to resell the farm; but in case he failed in selling it, he was to pay a rent of 700*l.* a year, and if he resold at profit he was to have the whole benefit. Bennett agreed to pay the 700*l.* rent, without regard to the sale, in order to satisfy Stallard, but used every endeavour to sell the farm, and laid out money in improvements, and advised with various persons whose help in selling he requested. The vendors called upon the purchasers to perform the contract, and Stallard consulted his solicitor as to the title; and so little desirous was he of the purchase, that he did not abstain from making all objections, but when he found a title could be made out, he submitted to accept it. Bennett being unable to sell, thought of letting the land, and procured from two tenants, Watkins and Barrow, rent at the rate of 28*s.* an acre. Stallard was engaged in a milk company, and Bennett, although greatly in debt, thought by selling his stock he could raise money for that speculation, and for that purpose at the end of 1831 he sold a portion of his stock. The milk speculation failed. The accounts between him and Stallard were not made out, but the statement was that some of the proceeds of the stock were applied in payment of part of his debt. The next thing was an agreement entered into by them in March 1832, that Bennett should relinquish to Stallard for a nominal consideration his contract for the purchase of the farm, and the benefit of the lease he had on it and Bennett agreed to join in, and execute all proper conveyances to Stallard, who was to pay the whole of the purchase money and to be put in possession of the farm, subject to the leases to Watkins and Barrow. In May 1832, Bennett wrote to Stallard that he could not go on without receiving money, and that he would come to Stallard, and would explain everything to his satisfaction. Applications were also made to Stallard by Mr. Protheroe and Mr. Webb, his solicitor, urging that whatever debt was owing from Bennett to Stallard ought to be given up in consideration of what Bennett had done, and Stallard promised to consider of it, but those applications led to no conclusion. It was then thought an arrangement might be made for giving Bennett a release by policy of assurance. The agent for the Eagle Insurance Office wrote to Stallard in January 1833, forwarding proposals for the assurance, which Stallard agreed to, and a policy for 4,450*l.* was effected on Bennett's

life in the Eagle Office. It was the determination of Bennett to extricate himself from his debt to Stallard, who on being applied to and told by a friend of Bennett, that the debt due to him from Bennett was arranged, said, How do you make that out? and being answered that it was in consideration of Bennett's giving up the farm, he replied "It would be a very serious matter." Stallard was then told that in addition to Bennett's interest in the farm, he would give up the cottage and bits of land which were his own property, and he might effect an insurance on Bennett's life. Stallard then asked how the premiums on the assurance were to be paid? He was answered that he (Stallard) should have immediate possession of the farm for the five years which remained of Bennett's lease which was worth 200*l.* a year, and that after the expiration of the lease Bennett should pay the annual assurance money, and the policy should be an assurance for the debt owing from Bennett to Stallard. The arrangement was carried into effect; deeds were prepared for the conveyance of the cottage and bits of land. It was agreed that Stallard should give up the warrant of attorney and should have the benefit of the policy and pay the premium for five years, Bennett then to pay them for the remainder of his life. The deed afterwards executed, recited that Bennett was debtor to Stallard in 4,487*l.* 10*s.* then recited the policy, and that the warrant of attorney had been delivered up, provided that the executors of Bennett should pay the debt, and contained a covenant that they should pay it one month after Bennett's death. Shortly after execution of this deed Bennett wrote to Stallard, hoping he would always be pleased with the purchase, and he joined in the conveyance of the farm to Stallard, and during his lifetime no complaint was made. Bennett did not rest long before he entered into another speculation. In 1833 he purchased an estate called the Hampton Court Estate, for 10,300*l.* for which various persons became his sureties. That purchase was completed, and the estate was conveyed to him on the 9th of May 1834. He died on the 22nd of the same May. His will was dated in November 1826: the Hampton Court Estate did not pass by it, but descended to his heir at law. He appointed his wife executrix, but she made an appointment to somebody else, which rendered it doubtful to whom the representation belonged. C. Bennett, the heir at law, conveyed the Hampton Court Estate to Mrs. Bennett, who put it up to sale by auction, but it was bought in as not fetching sufficient to pay the incumbrances on it, and a purchaser could not be found until Mr. Evans, the solicitor of Mrs. Bennett, procured Stallard to purchase it upon the terms of Mrs. Bennett renouncing the executorship to her husband in favour of Stallard, who then took out administration to Bennett and agreed to secure her a debt of 500*l.*, and also an annuity of 50*l.*, and the Hampton Court Estate was conveyed to him. A question arose with the Eagle Insurance Company on the policy granted by them. Bennett died

suddenly of a disease to which he was subject at the time the policy was granted, and the Company objected to pay. Stallard brought an action, which was tried in March 1835. The first witness proving the nature of Bennett's disorder, a compromise was agreed to, and about one half of the sum assured was received, which, after deducting costs, left only about 900*l.* recovered on the policy. The present bill was shortly afterwards filed, praying in a most unsatisfactory mode to have the deed of March 1833 rectified or set aside. That which the plaintiff's counsel asked for was intelligible, *viz.* that the debt due from Bennett to Stallard ought to be considered as satisfied. There was a statement that the farm of the Protheroes was of the value of 35*l.* per acre, which might have been got by that family, but that they had a particular favour for Bennett, and agreed to let him have it at 32*l.* 10*s.* per acre. The evidence did not support that statement. The Protheroes were desirous of getting the best price they could, and did not show any particular favour for Bennett. It was then said that Bennett had an agreement for a beneficial lease. The value of that agreement did not appear, but Bennett, a sanguine man, thought it beneficial. Stallard was involved against his own judgment in the purchase. His Lordship thought the arrangement was proved by the deeds. It was easy to conceive that the parties intended to put an end to the transaction in the way stated by the defendant, that Bennett was not to be further troubled for his life. There was nothing unreasonable in that. There was a debt subsisting on personal security, enabling Stallard immediately to proceed against Bennett, and Stallard was to have the policy payable immediately after Bennett's death. With respect to the next transaction, the purchase of the Hampton Court Estate, his Lordship without meaning to impute any thing to Stallard, was of opinion that purchase could not stand. This descended estate was a portion of the assets of Bennett, and Stallard was purchasing it for himself by the very act in which he was enabled to become the personal representative of Bennett. The price might have been perfectly fair, but the policy of the Court did not allow such transactions in trustees. He could not direct an account in any other than the ordinary form, having regard to the will and the charges of fraud contained in it. He would dismiss with costs so much of it as sought to set aside or rectify the deed of March 1833.

*Link v. Stallard and others.* Sittings at the Rolls, July 26, 27, and 29th, 1839.

#### Queen's Bench.

[Before the Four Judges.]

#### CONTRACT.—STATUTE OF LIMITATIONS.

*Where the trustees of a road purchased, for the purposes of the trust, some land and buildings from the owner, and at the same time took different quantities of stone from his quarry, and paid for the land and build-*



ings, but did not pay for the stone, and no distinct and specific contract for taking the stone was proved: Held, that the transactions were independent of each other, and that the taking of the stone was like the ordinary case of purchasing goods, and that the right of action was complete on each delivery, and consequently that the Statute of Limitations was an answer to an action for any part of the stone delivered beyond the period of six years before action brought.

*Assumpsit* for the value of some stone. Pleas, *non assumpsit*, Statute of Limitations, and payment. The cause was tried at the Spring Assizes for York, in 1838, before Mr. Justice *Patteson*, when it appeared that the defendant was the clerk of the Trustees of the Gomersal Road, and had, on their account, purchased on account of the trust some land and small buildings from the plaintiff, and taken stone for the roads from the plaintiff's quarry. In August 1830, the dealings between the parties began, and the land and small buildings were taken and paid for. The trustees, at different intervals, took stone from the plaintiff's quarry, between August 1830 and August 1831. The action was not brought till 1837, and the amount of the stone taken within the six years was very inconsiderable. On the part of the defendant it was objected that the plaintiff, who had not proved any specific contract for the delivery of stone, but had merely shewn that different quantities were at different times taken from the quarry, could only recover for such as had been delivered within the six years. It was contended on the other side, that the purchase of the land and buildings, and the taking of the stone, must all be considered as one transaction, and that a part of the debt having been incurred within six years, the whole was taken out of the Statute of Limitations. The plaintiff had a verdict for 86*l.* 16*s.* 8*d.*, the whole amount of the stone delivered; and a rule was subsequently obtained to set aside this verdict, and enter a nonsuit, or else to reduce the damages.

Mr. *Alexander* now shewed cause.—*Harris v. Osbourn*<sup>a</sup> is the last decision on this subject, and contains the true doctrine to be applied to cases of this sort. There it was held that where continuous business is carried on the Statute of Limitations is no answer to the demand for that part which was done before the six years. In that case a client had employed an attorney to conduct a suit, and it was held to be an entire contract to carry on the suit to its termination, and consequently, that the attorney was entitled to recover his whole charges, though part of them had been incurred beyond six years before action brought. That rule must be applied to this case. The contract here is entire, and any one part being within the six years the plaintiff can recover the whole.

Mr. *W. H. Watson*, in support of the rule.—The contract for the land and the purchase of

the stone were two entirely different transactions. The receipt given by the plaintiff for the purchase money of the land and buildings shews that he considered it a transaction complete in itself.—“Received of Mr. Carr the sum of 194*l.* 17*s.* 7*d.*, as the balance due to me from the Commissioners of the Gomersal New Road, on account of the land and old buildings.” No specific contract for stone was proved, and the purchase of it must therefore be considered as a contract *de die in diem*, just as one tradesman getting goods from time to time from another might bring his action immediately on the delivery of any one parcel. The case of an attorney conducting a suit has no similitude to the present. The defendant had no means of compelling the plaintiff to go on selling him the stone, which is itself a proof that there was no continuing contract. Either party might have put an end to the dealing on any one day. It is clear that there could have been no continuous contract for taking stone which was at that time parcel of the freehold, for otherwise such contract to be valid must have been in writing. In *Rothery v. Mannings*,<sup>b</sup> the plaintiff, a proctor, sued for the amount of his bill, which was chiefly for work done in prosecuting an appeal to judgment. After the judgment a communication was made to him by the other side respecting costs—he attended to it, and added it as an item to his bill. This was the only item which had accrued within the six years. The Court held that this item did not take the rest out of the Statute of Limitations. That case must govern the present.

Lord *Denman*, C. J.—It seems to me that the argument of the defendant is right, and that the plaintiff cannot recover more than the value of that quantity of stone which has been supplied within the six years. Not that I go with the argument which relates to the Statute of Frauds, for if the contract was in fact entire, though the plaintiff might not be entitled to enforce its performance, he might still be entitled to recover the value of the stone which had actually been delivered. But here, as it seems to me, he does not make out a contract in any way. What the defendant takes he must pay for, and what is taken each time forms the subject of a new contract between the owner and the purchaser. The rule for reducing the damages must therefore be absolute.

Mr. Justice *Littledale*.—I am of the same opinion. Of course, if the contract was entire, no action could be brought till it was complete, and the statute would not begin to run till then; but here there was no such contract. The parties got as much stone as they wanted from time to time, and the right of action was complete on each delivery.

Mr. Justice *Patteson* and Mr. Justice *Williams* concurred.

Rule absolute for reducing the damages.—*Carter v. Carr*, T. T. 1839. Q. B. F. J.

<sup>a</sup> 2 Crompt. & Mee. 627; 4 Tyr. 445.

<sup>b</sup> 1 Barn. & Ad. 15.

**Exchequer of Pleas.**

1 & 2 VICT. c. 110, s. 3.—ORDER FOR ARREST OF DEFENDANT.—MOTION TO DISCHARGE DEFENDANT.—AFFIDAVIT OF DEBT.

*Where a defendant has been arrested under a Judge's order made under the provisions of the 1 & 2 Vict. c. 110, s. 3, and it is sought to procure his discharge, the motion should be to set aside the order, and not the *capias*.*

*Such a Judge's order cannot be supported by an affidavit of debt by the indorsee against the drawer which does not allege presentment, and default by the acceptor.*

*Theobald* moved for a rule to shew cause why the *capias* issued in this case should not be set aside, and why the bail-bond should not be delivered up to be cancelled. It appeared that the defendant had been arrested upon a *capias* issued under the order of a Judge, made under the provisions of the 1 & 2 Vict. c. 110, s. 3, and had subsequently given bail. The order had been obtained upon an affidavit which stated that the defendant was justly and truly indebted to deponent in the principal sum of 489*l.*, as indorsee of a bill of exchange drawn by the defendant upon and accepted by *G. T. S.*, and by the defendant indorsed to the plaintiff, and which said bill was still due and unpaid. There was also a second affidavit to the effect that the defendant had said that he had rather go and travel in Scotland or Ireland than pay the bill. The ground of the present motion was that the affidavits were insufficient, and an affidavit was also produced in support of the application, in which it was denied that the defendant had any intention to leave the country.

*Platt* appeared to shew cause, but was interrupted by

The *Court*, who said that the affidavits on which the order had been obtained were clearly insufficient. The first did not aver any presentment or dishonor by the acceptor, and it did not appear that the defendant was legally liable upon it, or had made any promise to pay it. They suggested a doubt, however, whether the application should not have been to set aside the Judge's order instead of the *capias*.

*Theobald* submitted that the effect of a rule to discharge the Judge's order would have been the same as that of the present rule. The 6th section of the act gave the party arrested a right to apply to be "discharged out of custody." The defendant here was constructively in the custody of his bail.

The *Court* said that if they were to set aside the *capias*, the effect of their decision would be to make the sheriff a trespasser, and that in cases of this nature the application should be to set aside the Judge's order.

Rule discharged.—*Hopkinson v. Salembier*, T. T. 1839. Excheq.

**INQUISITION IN OUTLAWRY.—MOTION.**

*It is necessary that a motion relating to an inquisition in outlawry should be made through the medium of one of the Side Clerks, the return being made into the Queen's Remembrancer's Office.*

*Wightman* shewed cause against a rule nisi obtained by *Creswell*. It was a proceeding in outlawry, and the object of the rule was that one *Harvey* might be at liberty to traverse the inquisition taken, or that it might be quashed. The affidavits were entitled "In the Exchequer of Pleas: The Queen on the prosecution of *Thomas Carter*, the elder, against *Otho Manners*." It was objected that the motion was improperly made on the Common Law side of the Court, as the inquisition was returned into the Queen's Remembrancer's Office. *Manning's Exchequer Pr. f. 96.*

*Creswell, contrâ.*—Until the permission prayed to traverse the inquisition was granted, the proceedings were on the Common Law side of the Court.

By the *Court*.—The inquisition is supposed to be in the Remembrancer's Office. We cannot hear you unless by one of the Side Clerks.

Rule discharged.—*In re Otho Manners*, T. T. 1839. Excheq.

**EVIDENCE.—PROOF OF STATEMENTS MADE BEFORE MAGISTRATE.**

*The written statement of proceedings taken before a magistrate, under the 7 G. 4, c. 54, is the best evidence as well in the individual case in which they are taken, as in collateral proceedings, whether civil or criminal.*

*Waddington*, in Easter term, moved for a rule for a new trial in this case, upon the ground of the improper rejection of evidence. It was an action of trespass for an assault upon the plaintiff, and the defendants pleaded jointly Not Guilty, and *Simpson*, secondly, pleaded a justification. The cause was tried before Lord *Denman*, C. J., at the assizes for the county of Warwick, and the defendant proved the circumstances mentioned in his plea of justification, from which it appeared that the plaintiff was taken before a magistrate, when certain evidence was taken down in writing. The plaintiff's counsel then proposed to ask some questions as to what had been said before the magistrate, but it was contended for the defendant that the depositions should be put in. The learned judge was of that opinion, and rejected the evidence, whereupon a verdict was found for the defendant. It was contended that the rule that the deposition of what occurred before a magistrate was the best evidence, was not applicable to a collateral proceeding in a civil action. The mere circumstance of certain notes having been taken by a person in authority, did not exclude all other proof of what passed. By the statute 7 G. 4, c. 54, s. 3, the

testimony was made the sole evidence in the particular case only.

**Lord Abinger, C. B.**—When testimony has been committed to writing by a person of competent authority, the writing is, in the first instance, the only proper evidence of that testimony; and the rule is the same whether the evidence be taken by means of interrogatories in Chancery, or by depositions before a magistrate. I never before heard it objected that the rule did not apply to civil cases; but there can be no doubt that it does.

**Parke, B.**—The rules of evidence must be the same in civil and criminal cases. The deposition is undoubtedly the best evidence, but it is by no means conclusive, and may be explained.

**Rule refused.**—*Leach v. Simpson and Rock*, T. T. 1839. Excheq.

#### TENDER OF DEBT.

*Where a debtor went to his creditor, and laying a sum of money on the desk, desiring him to take what was due: Held, a good legal tender.*

**Evans** shewed cause against a rule obtained by *Chilton* for setting aside the verdict returned in this case for the defendant, on the ground that no legal tender had been made. It was an action of *assumpsit* on two promissory notes, with counts in the declaration for money lent, interest, and for money due on an account stated. The defendant pleaded a tender. The cause was tried before *Coleridge, J.*, and it appeared that a dispute existing between the plaintiff and defendant as to the precise amount of a debt due on a shop account, the shopman of the latter went to the attorney of the former, and placing 150 sovereigns on the desk desired him to take the amount due for principal and interest on the promissory notes. This was refused, unless the defendant agreed to fix the shop account at 8*l.* 13*s.*, but this having been declined, and the offer to pay the notes and interest being repeated and rejected, the defendant's agent took up the money and retired. The jury on this evidence found for the defendant. The rule had been granted on the authority of the cases of *Strong v. Harvey*, 3 Bing. 304; *Brady v. Jones*, 2 D. & R. 305. *Wade's case*, 5 Co. 115, was now cited, where it was expressly laid down that a tender of more than was due, was a good tender; and it was contended, that the same doctrine having been adopted in many subsequent decisions, it must be taken to be established. *Douglas v. Patrich*, 3 T. R. 683; *Black v. Smith*, Peake's N. P. Cases, 88; *Cadman v. Lubbock*, 5 D. & R. 289; *Dean v. James*, 4 B. & Ad. 546. It

was not a conditional tender which the defendant had made, but a positive one, and if any such suggestion were raised, it would be answered by the fact of the jury having negatived it in finding for the defendant. *Eckstein v. Reynolds*, 2 N. & P. 256. The cases cited in support of the rule were clearly distinguishable from the present.

**Chilton and T. W. Hill**, in support of the rule, urged, that in order to render a tender to them good it must have been specific, and there must be an express offer to pay it. *Ryder v. Lord Townsend*, 7 D. & R. 119; *Alexander v. Brown*, 1 Carr. & P. 288; *Evans v. Judkins*, 4 Camp. 156. The debtor had no right to throw upon the creditor the *onus* of taking too much by adopting the course pursued in this case. In all the cases cited, the money was produced in such a manner as to be separable from the mass.

**Lord Abinger, C. B.**—This rule must be discharged. Where a creditor knows the amount due to him, and his debtor comes with a sum exceeding that amount, and makes an offer to pay what is due, and the creditor makes no objection on the ground of his not having change, that is a good tender. If, indeed, the creditor might not happen to know the precise amount due, and tells his debtor so, the case may be different; but here it is admitted that the plaintiff's attorney knew the amount, and when the defendant's shopman asked what was due, he refused to tell him.

**Alderson, B.**—The condition which the plaintiff's attorney attempted to put upon the defendant, to allow a set off to stand at a certain sum, was one which he had no right to impose.

**Gurney, B., and Maule, B.**, concurred.

**Rule discharged.**—*Beavan v. Rees and another*, T. T. 1839. Excheq.

#### THE EDITOR'S LETTER BOX.

The communications of  $\Delta$  on "Preparing Leases," and "Aspirans" on "Legal Examination Distinctions," are printed, and will probably appear next week.

We must refer "A Law Clerk" to the Secretary of the Legal Discussion Society.

The communication of "A Constant Reader" shall be inserted.

It should be understood by our Correspondents that we claim the privilege of abridging their statements and remarks.

The information for the *Legal Almanac and Diary* has been received. Early communications are requested.

# The Legal Observer.

SATURDAY, SEPTEMBER 21, 1839.

— "Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## "GOOD-NATURE," WHERE CRIMINAL IN A TRUSTEE.

WE have more than once endeavoured to raise a warning voice to persons who fill that thankless office—a trusteeship. It is a common error to suppose that where the intentions are good,—where no fraud is imagined,—where no harm is meant,—that no harm will follow. The easy tempered, "good-natured" man is the selected victim on these occasions: he is the "favourite" for the office of trustee: he is promised that he shall be put to no expense, and, what he likes still better, "no trouble;" he will have nothing to do—merely sign a deed, or a receipt perhaps; all the duty is to fall on his co-trustee, or some other person. In this way this class of persons are led to undertake the office of trustee—often from the dislike of refusing a friend what appears to be so small a favour—and, in the end, they find themselves involved in a responsibility which brings on them vexation and distress; and in many cases ruin. The duty of a trustee should be discharged by some public officer or body intrusted by the state for that purpose; but, until this be done, we would advise all persons who are not well acquainted with their duties and responsibilities, and are not determined to act upon them, to have nothing to say to any application of this nature; and to enforce this advice we shall lay before them certain cases which have occurred, the account of which is to be found, not in novels or works of fiction, but in the Law Reports,—which, we think, will prove that what is called "good-nature" is held to be a crime in a trustee by our Courts of Equity, and will be punished as such, without any

mercy, if loss should ensue to the *cestui que trust*.

The first case we shall mention is that of *Brice v. Stokes*,<sup>a</sup> in which Lord Eldon, C., held a trustee to be charged, though he did not receive the money, but merely joined in the receipt, and permitted his co-trustee to keep and deal with the money contrary to the trust.<sup>a</sup> "The money (says his Lordship) was not, in a strict sense, received by both trustees, for the weight of evidence is that Mooring let Fielder, a professional man, circumvent him a little, in taking into his own hands the money; probably, upon some confidence that he would lay it out, either in the funds or such other security as it might be invested in consistently with the settlement; viz. a good security. \* \* \* Mooring also placed so much confidence in Fielder that, though the money got into the hands of Fielder alone, it is very difficult to say, as against those who come after Brice (the *cestui que trust*), that Mooring is not to be answerable. This is a sale under a power, but without necessity. This is an act that never could have been done by the mere exercise of the judgment of one of the trustees, enabling him to determine that it was necessary. There was no necessity, in respect of which the other should join. But, though a trustee is safe, if he does no more than authorize the receipt and retainer of the money, as far as the act is within the due execution of the power, yet, if it is proved that a trustee, under a duty to say, his co-trustee shall not retain the money beyond the time during which the transaction requires retainer, and says, with his knowledge, and therefore with his consent, the co-trustee has not laid it out according to the trust, but has

<sup>a</sup> 11 Ves. 319.

kept it, or lent it, in opposition to the trust, and the other trustee permits that for ten years together, the question turns upon this; not whether the receipt of the money was right, but whether the use of it, subsequent to that receipt, was right, after the knowledge of the trustee that it had got into a course of abuse."

We have extracted this judgment at such length, because this sort of case is constantly occurring: the "Moorings" are very common in the world, nor are the "Fielders," we are afraid, very rare.

In another case,<sup>b</sup> Sir William Grant, M. R., says, "It would be very dangerous, though no fraud could be imputed to the trustees, and no kind of interest or benefit to themselves was looked to, to lay down this principle, that trustees might act as these did:" they being simply guilty of negligence.

In *Moyle v. Moyle*,<sup>c</sup> Lord Brougham, C., says, "Taking the whole of these circumstances into my consideration, it is impossible for me to hold that the trustees have sufficiently shewn that there were no *laches* on their part. To permit such laxity would be most dangerous. A man may renounce a trust, or he may refuse to undertake it, but having once accepted it, whether as executor or as trustee, he must discharge its duties so long as his character of trustee subsists, for by consenting to assume the office he prevents other persons from being appointed or accepting, who might have more time or leisure to devote to it. It is no excuse, therefore, that the parties are volunteers, for they are greatly to blame in consenting to act if they really have not time for the due performance of their duty, and injury is sustained in consequence."

In *Hanbury v. Kirkland*,<sup>d</sup> the circumstances weret hese:—On a marriage, a sum of stock was settled for the separate use of the wife for life, remainder for the husband for life, remainder for their children, with power to change securities, with consent of the wife. The dividends on the stock being reduced, one of the trustees, in whom the husband and wife principally confided, and who, with his partners, was their solicitor, informed his co-trustees that he had an opportunity of investing the property in a mortgage, at 5l. per cent., and, with the consent of the husband and wife, requested his co-trustees to execute a power of attorney to enable him to sell the stock. *The co-trustees, without inquiring into the mat-*

*ter, complied*; the trustee sold the stock, and absconded. And Sir L. Shadwell, V. C., held that the co-trustees were bound to reinvest the stock, and to pay the costs of the suit.

There are many more cases of the same nature, but we have selected those which appeared to us to bear on circumstances of very frequent occurrence, and which are probably familiar to all our readers. We think they bear out the position with which we started, that "good-nature" is a crime in a trustee. We shall, however, add one more decision, not only because it is the last on the point, but because it peculiarly illustrates the particular bearing in which we have wished to place it before all our readers, whether professional or unprofessional. We mean the case of *Booth v. Booth*,<sup>e</sup> in which Lord Langdale, M. R., felt himself bound, however reluctantly, to abide by the former decisions. "This is a very unfortunate case (said his Lordship). It is to be lamented that Batkin ["the good-natured man"], by inadvertance and over good-nature, should have placed himself in such a situation of responsibility as he has done. Here is a will, the terms of which are perfectly distinct, [his Lordship read it]. On the 26th of October 1830, the two executors proved the will; they take on themselves the trusts and the duty of performing it. From that moment it was their duty to do all that was necessary for the conversion of the estate into money, and to see the dividends duly applied; but Batkin, unfortunately, did not consider that, by proving the will, he had undertaken any duty, or incurred any responsibility: he says he proved the will in consequence of the request of the widow, who informed him that he would not thereby undertake any duty, or be responsible for any thing. It is important that it should be well understood that no one can safely act in that manner, and that the law will not permit a party to neglect the duty which, by proving the will, he has undertaken. I am of opinion that he became liable for the performance of the trusts, and for any consequences arising from a breach of them. Part of the testator's property was engaged in trade; that trade ought to have been put an end to, and the property invested. Batkin, it appears, went to the place of business from time to time, and it is therefore clear that he knew that what ought to have been done was not performed. He acquiesced, week by week,

<sup>b</sup> *Caffrey v. Darby*, 6 Ves. 495.

<sup>c</sup> 2 Russ. & Myl. 715.

<sup>d</sup> 3 Sim. 265.

<sup>e</sup> 1 Beavan, 125.

and year by year, in the breach of trust which his co-executor was committing. There is no corrupt motive—no receipt of money which he misapplied, to be attributed to him, but he undertook the performance of a duty which he did not perform. This is no small blame: a man cannot be allowed to neglect a duty which he has undertaken. He permitted his co-executor to carry on the trade, and consequently must be considered, in this Court, a party to this breach of duty. It is said, in extenuation, that he did this from the best motives; he thought the brother of the testator was the proper person to carry on the business; he thought there would be more profit made by this mode of dealing with the property, and that it was more advantageous for the children. All this might have been very right to do and to acquiesce in, if he had undertaken to make good any loss which might occur in the course of the experiment; he could not, however, so act, without incurring that responsibility, if a loss occurred. I am of opinion, on the authorities and on the established rules of the Court, to which it is not necessary to refer, that a trustee who stands by and sees a breach of trust committed by his co-trustee, becomes responsible for that breach of trust. That the widow concurred seems to be quite clear; and any interest to which she may be entitled is the proper fund to resort to in the first instance. If she has obtained any benefit from the breach of trust, the trustee ought to be compensated in respect of it. I must, therefore, declare, that the property ought to have been realised on the death of the testator; and that Batkin and Booth [the other trustee] are liable for any loss which has occurred from not winding up the testator's affairs at that time."

We now leave the subject to the consideration of our readers.

## PROPERTY LAWYER.

### WHAT AN ALIEN MAY TAKE.

In the case of *Fourdrin v. Gowdey*, 3 Myl. & K. 385, a person having freeholds and leaseholds, directed all his property to be sold and converted into money; and after charging the mixed fund with his debts and legacies, gave the residue to aliens, one of whom was his heir at law; and Sir John Leach, M. R., held that the aliens could no more take an interest of this sort in the land than the land itself.

In a recent case there was a devise of lands to English subjects, in trust to sell, and after payment of mortgages to invest the surplus monies in the funds, in trust for persons, some of whom were aliens; and Lord Langdale, M. R., held that the crown was not entitled to the share of the aliens, either in the land or the produce, "the law giving to an alien," said his Lordship, "the right of holding money or stock, and refusing to him the right of holding land, any man desiring to benefit an alien may, if he pleases, sell his land, and give the purchase money or the stock which it may produce to an alien, or a trustee for his benefit. In so doing he would do nothing contrary to the policy of the law; and it would be singular if, being entitled to do this by himself, he could not accomplish the same purpose by means of another, as his agent or trustee, created by deed or will for the purpose of sale and conversion; because, during the time which may elapse before the conversion can be completed, the alien is by the peculiar doctrine of this Court, considered to have an interest in the land which is to be converted, i. e. an interest that the lands should be sold to persons who can legally hold it, in order to raise the money which he, the alien, can legally hold. \* \* \* The only authority which appears to occasion any difficulty, is the case of *Fourdrin v. Gowdey*, in which Sir John Leach considered a gift of this kind as a gift of land, subject to charges; and held that aliens could no more take an interest in the land, than the land itself. He must have meant to use the word "hold" instead of the word "take;" because it is clear that aliens may take land, although they cannot hold it against the king. But in *Fourdrin v. Gowdey* the question principally argued related to the effect of the letters of denization; and the question which bears upon the point arising in the present case was much less considered. Moreover there was no estate devised to trustees for the purpose of enabling them to sell and convey, but only a direction to the executors to sell. Having regard, however, to the expression which fell from Sir John Leach in that case, and his decision as to the leaseholds in that case, I think that he would probably have considered such an interest as is given to the aliens in that case, as an interest which might be claimed by the Crown. But it is a single case; in the consideration of it the policy of the law in regard to mortmain seems to have been in some degree confounded with the policy of the law as to alienage; and as upon the most careful consideration of it I am unable to acquiesce in the reasons upon which so much of the decree as is applicable to the present case is founded, or to find any others which are satisfactory, I do not think that I ought to be governed by it." *De Hourmelin v. Sheldon*, 1 Beavan, 79; first reported, 17 L. O. 300. By this case *Fourdrin v. Gowdey*, if not overruled, is at all events much shaken.

**CHANGES IN THE LAW**  
IN THE LATE SESSION OF PARLIAMENT.

No. X.

TITHES COMMUTATION.

2 & 3 Vict. c. 62.

[Concluded from p. 374.]

14. *Rent-charge in respect of tithes of common appurtenant to be a charge on the allotments made in respect of the lands to which right of common attached.*—And whereas in certain cases of commons hereafter to be inclosed allotments may be made in respect of tenements and hereditaments to which a right of going on such common is appendant or appurtenant, the tithes whereof would be chargeable on the tenements or hereditaments in respect of which such allotments may be made, and such tenements or hereditaments are not of themselves an adequate security for the rent charge to be fixed in respect of such tithes: Be it therefore declared and enacted, that in every such case the rent-charge to be fixed instead of such tithes shall be a charge upon and recoverable out of any allotments to be in future made in respect of such rights, as well as upon such tenement or hereditaments in respect of which such allotments are made, and by the same ways and means as are provided for the recovery of rent-charges by the said acts or any of them or this act.

15. *Recited acts extended to collegiate bodies &c. notwithstanding restraining statute.* 13 Eliz. c. 10.—And be it declared and enacted, that all the provisions in the recited acts or any of them in any way relating to or enabling the pulling down or sale of barns and buildings generally used for housing tithes paid in kind, and the sale of the materials and the site thereof, either with or without any farm buildings or homesteads thereto belonging, and for the conveyance or delivery thereof, and for securing the consideration money for the benefit of the persons thereunto entitled, shall apply to and may be made available by any corporate body or person, whether as trustees or otherwise, by any master and fellows of any college, dean and chapter of any cathedral or collegiate church, master or guardian of any hospital, parson, vicar, or any other having any spiritual or ecclesiastical living, being seised or possessed of any such barns or buildings, or the site thereof, notwithstanding any thing in a certain statute made in the thirteenth year of the reign of Queen Elizabeth, for making void fraudulent deeds made by spiritual persons to defeat their successors of remedy for dilapidations, or in any other statute.

16. 6 & 7 W. 4. c. 71, s. 77, *extended to corporate and collegiate bodies.*—And be it declared and enacted, that so much of the said acts or any of them as enables any owner of a particular estate in lands or tithes to charge so much of the expences of the commutation as is defrayed by him, or any part thereof, and the interest thereon, upon the lands whereof the tithes are commuted, or upon the rent charge

to be received by him instead of such tithes respectively, shall in like manner extend and be applicable to and may be made available by any corporate body or person, master or fellows of any college, dean and chapter of any cathedral or collegiate church, master or guardian of any hospital, parson, vicar, or any other having any spiritual or ecclesiastical living, and whether seised in fee or for a limited estate in such lands, tithes, or rent-charge, any thing in the said statute of Queen Elizabeth, or any other restraining statute, or in the tenure by which such lands, tithes, or rent-charge respectively are holden to the contrary notwithstanding, but so nevertheless that the charge upon such lands or rent-charge respectively shall be lessened in every year following such commutation by one twentieth part at least of the whole original charge thereon.

17. *Colleges and corporations aggregate may charge expences on other lands than those in respect of which such expences are incurred.*—And be it enacted, that it shall be lawful for any ecclesiastical corporation aggregate, or any collegiate body, with the consent of the said commissioners, testified under their hands and seal, to charge with the amount of the expences of commuting the tithes of any lands of which they are owners, or any part of such expences, with interest thereon or any other lands holden by them to the same uses or on the same trusts as the lands in respect of which such expences were incurred, but so nevertheless that the charge upon such lands shall be lessened in every year following by one twentieth part at the least of the whole original charge thereon.

18. *For recovery of expences of apportionment.*—And be it enacted, that payment of the expences of or incident to making any apportionment, or any other expences which the said commissioners are authorised and may have ordered or may order to be paid by any owner of lands under and by virtue of the recited acts, or any of them, or this act, may be enforced by the same ways and means as payment of rent charge in arrear may be enforced under the provisions of the said acts or either of them.

19. *Extension of 6 & 7 W. 4, c. 71, ss. 29, 62, for giving land in lieu of tithes.*—And be it enacted, that so much of the said first-recited act as enables any land owner, either by parochial agreement or individually, to give land instead of tithes or rent charge at any time before the confirmation of any instrument of apportionment, shall be and the same is hereby extended, and the powers and provisions for that purpose may be exercised in every such case at any time, as well after as before such confirmation of the apportionment as aforesaid, during the continuance of the commission constituted and with the consent of the commissioners appointed and acting under the said first-recited act.

20. *Lands taken by ecclesiastical tithe owners instead of tithes to vest absolutely in them.*—And be it enacted, that in any case where any land

shall have been or shall hereafter be taken by any ecclesiastical tithe owner under any agreement for the commutation of any tithes, or for giving land instead of any rent-charge, under the recited acts, or any of them, or this act, such land shall upon the confirmation of such agreement vest absolutely in such tithe owner and his successors, free from all claims of any person or body corporate, and without being thereafter subject to any question as to any right, title, or claim thereto, or in any manner affecting the same; and the commissioners shall cause to be inserted in or endorsed upon every such agreement the amount of the rent-charge instead of which such land was given, and the lands upon which the same was chargeable; and every person who if this act had not been made would have been entitled to recover any such land given instead of rent-charge, or any rents or profits issuing out of such land, shall be entitled to recover against the party or parties giving such land instead of tithes or rent-charge, his, her, or their heirs, executors, or administrators, by way of damages, in an action on the case, such compensation as he or she may be entitled to for any loss thereby sustained; and such damages, and all costs and expenses awarded to the plaintiff in such action, shall forthwith attach upon and be payable out of the lands exonerated by such agreement.

21. *Corporations, trustees, and feoffees to charitable uses may convey lands.*—And be it enacted, that all agreements and other assurances which shall be made for the purpose of effecting the taking of land instead of rent-charge under the provisions of the said recited acts, or any of them, or this act, shall be valid and effectual for the purpose of vesting an estate of inheritance as to such lands in such ecclesiastical tithe owner and his successors, notwithstanding the same be made by any corporation sole or aggregate, or any trustees or feoffees for charitable purposes, otherwise restrained from or incapable of making any such valid conveyance or assurance.

22. *Apportionments may be confirmed though commissioners not satisfied of accuracy of Maps,* 7 W. 4, & 1 Vict. c. 69, s. 1.—And be it enacted, that the provisions and conditions of the said secondly-recited act, whereby the said commissioners are enabled to confirm any instrument of voluntary apportionment, although they shall not be satisfied of the accuracy of any map or plan annexed thereto, or that the several quantities of land specified in such apportionment or agreement are therein truly stated, shall extend to enable the commissioners, if they shall think fit, to confirm any compulsory apportionments to which any existing map or plan, agreed to be adopted at a parochial meeting, shall be annexed, although the said commissioners shall not be satisfied of the accuracy of such map or plan, or that the several quantities of land specified in such apportionment are truly stated in such map or plan.

23. *Expences of apportionment to be borne in certain cases as commissioners may direct.* 6 & 7

W. 4, c. 71, ss. 12, 74, 75.—And whereas in and by the first-recited act the words "land owner" or "tithe owner," or "owner of lands" or "owner of tithes," are defined to mean and include every person who shall be in the actual possession or receipt of the rents or profits of any lands or any tithes, except (amongst other exceptions) tenant for life or lives, or for years holding under a lease or agreement for a lease on which a rent of not less than two thirds of the clear yearly value of the premises therein shall have been reserved, and that without regard to the real amount of interest of such person; and in every case in which any tithes or lands shall have been leased or agreed to be leased to any person for life or lives, or for years by any lease or agreement for a lease on which a rent less than two thirds of the clear yearly value of the premises comprised therein shall have been reserved, the person in receipt of such rent shall jointly with the person liable to the payment thereof, be deemed for the purposes of the said act to be the owner of such tithes or lands: And whereas certain allowances and expences to surveyors and tithe-valuers necessary for making any award, and all other expences of or incident to making an award, are by the said recited acts or some of them directed to be paid by the land owners and tithe owners interested in the said award, in such proportion, time and manner as the commissioners or assistant commissioners shall direct; and the expences of or incident to making any apportionment are by the said first recited act to be paid by owners of lands in rateable proportions to the sums charged on the said lands in lieu of tithes by such apportionment: and whereas cases have occurred and may occur where by reason of the rent reserved in certain leases or agreements for leases not being less than two thirds of the clear yearly value of the premises thereby demised or agreed to be demised at the date or time of coming into operation of such leases or agreements, but which premises are at the time of putting in force the provisions of the said recited acts of improved yearly value, so that the rent originally reserved or agreed for is less than two thirds thereof, but by the operation of the said recited words, as defined in the said first recited act as aforesaid, such expences or a part thereof, would, under the said acts, be chargeable on the original lessor or original lessee, and not on the intermediate or sub-lessors or lessees whose beneficial interest in the said lands and tithes, or rent charge in lieu of tithes is proposed to be or has been dealt with under the said recited acts, or some or one of them, or this act: and whereas certain other cases have occurred and may occur in which it is expedient that the commissioners should be empowered to vary and fix the proportion of the expences of apportionment, including therein the expences of or incident to the map or plan annexed thereto, and the copies thereof, between the owners of the lands affected thereby, as such owners are defined in the said first recited act as aforesaid and according to such principles as to the said commissioners



shall seem just and equitable; be it therefore declared and enacted, that, notwithstanding any thing in the said acts or any of them contained, it shall be lawful for the commissioners in such cases as they may deem it just and equitable, to order and direct that such expences of or incident to any award, or any part thereof, shall be borne and paid in such proportion and manner, by and amongst the persons interested in the lands, tithes, or rent-charge respectively dealt with in such award, and that such expences of or incident to any apportionment, or any part thereof, shall be borne and paid by and amongst the persons interested in the lands, in such proportions and manner respectively as the said commissioners shall direct; and such expences, and every or any part thereof, shall in every such case be recoverable in like manner as expences, or the share thereof to be borne by any person, are or is recoverable under the provisions of the said first recited act or this act.

24. *Award may be made of rent-charge to certain owners of tithes by general description.* 6 & 7 W. 4, c. 71, ss. 12, 21, 50.—And whereas in certain cases of compulsory award, where tithes are held by one tithe owner in different rights, or where by reason of owners of land having purchased or otherwise acquired such a beneficial interest in the tithes arising out of the same, for life or lives or for years, as under the said provisions of the said first-recited act requires that such persons respectively should be dealt with and distinguished in such award as joint owners with the lessor of or the person having the reversionary interest in such tithes; but great difficulties have arisen in distinguishing the sums payable to each such tithe owner, as also in distinguishing the respective lands out of which the tithes accruing to any such tithe owner, either as holding such tithes in different rights or as joint tithe owner, arise, or whereon any several rent-charge should be awarded, and the completion of such award has been thereby impeded; Be it therefore declared and enacted, that in any such case it shall not be necessary in any such award to distinguish the lands or award a several rent-charge to each such owner of the tithes by name, or otherwise to distinguish such tithe owner, but it shall be sufficient to award a gross rent-charge to such owner of tithes in different rights in respect of such tithes so held by him, or, as the case may be, to the original lessor of such tithes, or the person in whom the ultimate reversion thereof shall be, by his proper name and description, and in any such case of joint ownership to the several persons claiming under him, and being so respectively joint owners of such tithes, by such general terms and description as to the commissioners or assistant commissioner making such award shall seem fit: provided always, that the name of each such tithe owner, and the lands out of which his respective tithes, or the portion of such gross rent-charge instead of such tithes, shall respectively accrue or issue, shall be distinguished in the instrument of apportionment made in pursuance of such award; and every

such tithe owner shall be as fully entitled to take, hold, and recover such portion of the rent-charge as shall be so apportioned in such instrument of apportionment, upon the several lands the tithes or rent-charge whereof are so held by him respectively, according to his respective term and interest in such tithes or the rent-charge, in as ample a manner as if such tithe owner and lands had been respectively named and distinguished in such award under the provisions of the said first-recited act.

25. *Commissioners may adjourn meeting without attending to adjourn.*—And be it enacted, that it shall be lawful for the said commissioners to adjourn any meeting by notice in writing under their hands or the hands of any two of them, to be affixed and published in manner provided for notices in the said firstly-recited act, without any commissioner or assistant commissioner giving attendance for the purpose of making such adjournment.

26. *Provision for dividing the tithe of fruit plantations in certain cases.*—And be it enacted, that in case any of the lands in a parish the tithes whereof shall be in course of commutation under the provisions of the said first-recited act shall be orchards or fruit plantations, and notice in writing, under the hands of any of the owners thereof whose interest therein shall not be less than two thirds of the whole of the orchards and fruit plantations in such parish, shall be given to the valuers or commissioners or assistant commissioner by whom any apportionment provided for by the said act shall be made at any time before the draught of such apportionment shall be framed, that the tithes thereof should be distinguished into two parts, the amount which shall be charged by any such apportionment upon the several orchards and fruit plantations in such parish shall be distinguished into two parts accordingly, and the same shall be called the Ordinary Charge, and the Extraordinary Fruit Charge; and the extraordinary charge shall be a rate per imperial acre, and so in proportion for less quantities of ground, according to the discretion of the valuers or commissioners or assistant commissioner by whom such apportionment shall be made as aforesaid.

27. *Newly cultivated fruit plantations to be charged an additional sum.*—And be it enacted, that all lands the tithes whereof shall have been commuted under the said act shall be situate within the limits of any parish in which an extraordinary fruit charge shall have been distinguished as aforesaid at the time of commutation, and which shall be newly cultivated as orchards or fruit plantations at any time after such commutation, shall be charged with an additional amount of rent charge per imperial acre, equal to the extraordinary fruit charge per acre in that parish: provided always that no such additional amount shall be charged in respect of any plantation of apples, pears, plums, cherries, and filberts, or of any one or more of those fruits, during the first five years, and half only of such additional amount during each of the next succeeding five years of such new cultivation thereof: and that no such

additional amount shall be charged in respect of any plantation of gooseberries, currants, and raspberries, or of any one or more of those fruits during the first two years, and half only of such additional amount during each of the next succeeding two years, of such new cultivation thereof; and that no such additional amount shall be charged in respect of any mixed plantation of apples, pears, plums, cherries, or filberts, and of gooseberries, currants, or raspberries during the first three years, and half only of such additional amount during each of the next succeeding three years of such new cultivation thereof.

28. *Fruit plantations when displaced to be relieved from additional charge.*—And be it enacted, that all lands the tithes whereof shall have been commuted as aforesaid, which shall be situated within the limits of any parish in which an extraordinary fruit charge shall have been distinguished as aforesaid, and which shall cease to be cultivated as orchards or fruit plantations at any time after such commutation, shall be charged, after the thirty-first day of December next following such change of cultivation, only with the ordinary charge upon such lands.

29. *Provision for mixed plantations of hops and fruit.*—Provided also, and be it enacted, that in case any lands within the limits of a parish in which an extraordinary fruit charge shall have been distinguished as aforesaid shall have been or shall at any time be planted with fruit, and also with hops, the same shall, during the continuance of such mixed plantation of hops and fruit be liable to the extraordinary hop charge only, or to the extraordinary fruit charge only, payable in respect of the same lands, not to both those charges; and that the extraordinary charge to which the lands so planted shall be liable shall be the higher of the two for the time being.

30. *When land subject to rectorial and vicarial tithe, acreable rent charge to be fixed.*—And be it enacted, that where any land liable to any such extraordinary charge for the tithes of a mixed plantation of hops and fruit shall at the time of the commutation produce both rectorial and vicarial tithes payable to different persons, the apportionment shall set out the same, distinguishing the amount of ordinary and extraordinary charge payable to each tithe owner, and shall divide the whole acreable extraordinary charge between such tithe owners, according to the quantity of land producing rectorial tithe, and the quantity producing vicarial tithe.

31. *Provision for future mixed plantations.*—And be it enacted, that in all cases in which there shall be hereafter mixed plantations of hops and of such fruit as aforesaid in any parish or district in which an extraordinary fruit charge shall have been declared, the rectorial and vicarial tithes whereof but for the commutation would have been payable to different owners, the extraordinary charge payable in respect of the tithes of such mixed plantation shall be divided between such owners in pro-

portion to the extent of land occupied by that produce which would have paid tithes to each of them respectively: provided always, that payment of the share of each tithe owner, when so ascertained, shall be taken to be subject to the provisions contained in the said first recited act and in this act, for lessening the amount of extraordinary charge payable in respect of hop gardens and orchards respectively at the beginning of such cultivation.

32. *How the rent charge for hops and fruit may be fixed in certain cases.*—And be it enacted, that for the purpose of fixing any charge for the tithes of hops or fruit, or of any mixed plantation as aforesaid the commissioners may, if they see fit, assign the parish or lands in respect of which due notice shall have been given, requiring the tithes thereof to be separately valued, as required by the said first recited act, or any part or parts of such parish or lands, as a district under the provisions of the said act, and may fix a charge upon such lands in respect of the tithes of hops or fruit as the rent charge to prevail and to be established in respect of the same, without specific reference in the award to any other parish or lands, but having regard nevertheless to the general amount of compositions which they shall find to have prevailed in other parishes of a similar description, and not to the money payments in the parish under consideration, or the value of the tithes in kind therein.

33. *Provisions for giving effect to parochial agreements and proceedings thereon in certain cases of extraordinary charge.*—And be it enacted and declared, that the provisions of the said first-recited act for distinguishing rent-charges apportioned upon lands cultivated as hop grounds into two parts, and for relieving lands from and subjecting the same to an extraordinary charge when ceased to be cultivated, and when newly cultivated as such respectively, shall be held to extend to parochial agreements already or hereafter made, and to the proceedings consequent thereupon, and to the lands discharged from tithes by virtue thereof; and that every such agreement and proceeding, whereby any district has been or shall be assigned for establishing or distinguishing into two parts any rent-charge in respect of lands cultivated as aforesaid, shall be deemed valid, operative, and effectual for all the purposes of the said recited acts and of this act, and that every district assigned by virtue thereof shall be deemed a district duly assigned, and every rent-charge created thereby a valid rent-charge for the like purposes.

34. *For the settlement of disputes as to boundaries.*—And be it enacted, that in case there shall be any question between any parishes or townships, or between any two or more land owners, touching the boundaries of such parishes or townships, or the lands of such land owners respectively, or if such parishes or townships or land owners shall be desirous of having such boundaries ascertained or a new boundary line defined, it shall be lawful for the said commissioners, or any assistant commissioner, on the application in writing of a majority of not

less than two-thirds in number and value of the land owners of such parishes or townships in the case of parochial or township boundaries, or on the like application of such two or more land owners in the case of boundaries between their lands, to deal with any dispute or question concerning such boundaries, and to ascertain, adjust, set out, and define the ancient boundaries between such parishes or townships or the lands of such land owners respectively, or draw and define a new line of boundary, as they may see fit; and in every such case the powers and provisions of the said recited acts and of this act, so far as the same may, in the judgment of the said commissioners or assistant commissioner respectively, be applicable, shall extend and may be applied by them or him to such question; and the boundary line so ascertained or newly defined by the said commissioners or assistant commissioner shall thenceforward be the boundary line of and between such parishes, townships, or lands of such land owners respectively for all purposes whatsoever: Provided always, that nothing in this provision contained shall extend to any boundary or part of a boundary being also the boundary line or part of the boundary line of any county, or to the boundary line of any copyhold or customary land, unless the consent in writing of the lord of the manor whereof such land is holden to such application being dealt with by the said commissioners or assistant commissioner shall have been first sent to them or him for such purpose: Provided also, that every such boundary line shall be duly set out and delineated on the map annexed to the schedule of appointment, or upon a separate plan to be attached thereto, with proper descriptions and references, showing in what respects such map so annexed to the apportionment is varied, and in what respect the several closes whereon any rent-charge is fixed are affected thereby; and such map shall in every such case be deemed to be varied by such plan, and be as valid for all purposes as if the same had been originally drawn and sealed or certified by the said commissioners with such variation.

35. *How questions of boundary removed before Queen's Bench are to be dealt with.*—And be it enacted, that in every case in which any judgment or determination of the commissioners or of any assistant commissioner respecting the boundary of any parish, district, or lands shall have been or shall be removed into the Court of Queen's Bench, it shall be lawful for the Court to direct the trial of one or more feigned issues upon such points as the Court shall think fit, and also to direct who shall be the plaintiff or plaintiffs and who shall be the defendant or defendants on such trial, or determine the same in a summary manner, or otherwise to dispose of the question or questions in dispute, and to make such other rules and orders therein as to costs and all other matters as may appear to be just and reasonable.

36. *Commissioners may award costs of inquiry into boundaries.*—And be it enacted, that it shall be lawful for the said commissioners and for such assistant commissioner as aforesaid to

order and direct that all reasonable costs, charges, and expences already or hereafter to be incurred by any parties interested in or about any inquiry into any boundary which the said commissioners or such assistant commissioner are or is authorized to settle, shall be borne and paid in such proportion and manner by and amongst the several other parties interested therein (as well those who shall have signed a request to the Tithe Commissioners that the said commissioners should inquire into and settle such boundaries, as every other person interested who shall, either personally or by his or her counsel, attorney, or agent, appear upon such inquiry before the said commissioners or before such assistant commissioner) as the said commissioners or any such assistant commissioner shall direct; and such costs, charges, and expences, and every part thereof, shall in every such case be recoverable in the like manner as expences or the share thereof to be borne by any person are or is recoverable by the recited acts or this act.

37. *This act to be taken as part of 6 & 7 W. 4, c. 71.*—And be it enacted, that this act shall be taken to be a part of the first recited act for the commutation of tithes in England and Wales, and of the secondly-recited act for amending the same, and of the said thirdly-recited act to facilitate the merger of tithes; and that in the construction of this act, unless there be something in the subject or context repugnant to such construction, the several words used in this act shall have and bear the same interpretation as is given to such words respectively in the said recited acts or either of them; and whenever a word importing the singular number or masculine gender only is used the same shall be understood to include and shall be applied to several persons or parties as well as one person or party, and females as well as males, and several matters or things as one matter or thing respectively, and the converso.

38. *Act may be amended or repealed.*—And be it enacted, that this act may be amended or repealed by any act passed in this session of parliament.

#### NOTES ON THE TITHE AMENDMENT ACT.

THIS act extends the power of merging and commuting tithes. Under the 6 & 7 W. 4, c. 71, difficulties arose in consequence of some of the cases in particular districts being different from the ordinary nature of the tithe system, and the present statute has been passed to remove those difficulties. The 1st and 2nd sections enact that charges on tithes or rent-charges, shall attach on the land; and the residue of the land is then freed from this charge. The parties proposing to merge may apportion the charge on a part of the land. The 4th and

5th sections extend the power of special apportionments on tithes, whether sought to be merged or not, and provide that the costs shall be borne by the party effecting the apportionment, as the person benefitted. The power of merger to glebe is given by the 6th section, thus enabling the owner to let it free of tithe; and the 7th section authorizes the merger of tithes in copyholds. The Commissioners are empowered in cases of fraud or error to amend agreements and awards by a supplemental award, s. 8. Easter offerings may be commuted, s. 9. The inconvenience arising from lanmas lands which are in the hands of private persons during a certain portion of the year and thrown open for the rest of the year, is remedied by the 13th section.

The sale of tithe barns and the expenses of commutation are provided for by sections 15—18. Provision is also made regarding the expense of investigating titles in cases where land is proposed to be given in redemption of rent-charge, ss. 19—21. The tithe of fruit and orchards is put on the same footing as hops under the Tithe Commutation Act, ss. 26—33.

There are also various clauses amending the former acts as to boundaries—maps—expenses—apportionment, &c. See ss. 34, 35, 36; 22—25.

## USAGES OF THE PROFESSION.

### PREPARING LEASES.

*To the Editor of the Legal Observer.*

Sir,  
IN the preparation of leases between landlord and tenant, the practice is for the landlord's solicitor to prepare the lease, and in the absence of special agreement the tenant pays the expenses.

Will you have the goodness to say, for the information of your readers, whether the same rule exists in the case of a party *purchasing* leasehold property, and choosing to take an under-lease in preference to an assignment, and whether in such a case the purchaser's solicitor has not the right of preparing the underlease. Δ

[We believe that the payment of a consideration makes no difference in the usage regulating the preparation of the lease by the landlord's solicitor.—Ed.]

## LEGAL EXAMINATION DISTINCTIONS.

Sir,

I hope you will give insertion to this letter, which expresses the sentiments of many in this great town, who form part of the body to which I belong. We have seen, with much pleasure, a revival of the question of legal distinctions upon examination, which we were almost fearful had been given up, in spite of its merits. I have, however, been recently gratified by the letter of a "Country Solicitor," who, in my humble opinion, has discussed the matter with great clearness and force, and, waiving a few minor points of difference, I cordially concur in his plan. I think he has, perhaps, been too severe upon G. H., though the latter may have deserved it from the tone of some parts of his previous letter; nor do I exactly admit that a correspondence between the "*younger members*" of the profession must necessarily prejudice the subject, though, perchance, they may not manage it with the authority, calmness, and good sense of their seniors.

I have now served two years of my clerkship, and notwithstanding all that has been said and sung about the dryness of the law, I like it extremely. Far be it from me to pretend towards understanding everything I see, hear, and do, but I have found that all I have attempted, though seemingly difficult, may be gradually mastered, and I have a good *hope* that the same rule will prevail throughout. At any rate I have a good heart to try it, and I believe that is never bestowed in vain. Hitherto I have worked in faith of future fruits in the shape of business, and so I shall continue to do, nothing doubting; but will any one tell me that my endeavours would not be sweetened, if not redoubled, by the prospect of honorary distinction? that if I now toil hard under the influence of *one* motive, I should not toil harder under the influence of *two*? I suppose there are some "heavy souls" who care not whether they are at top or bottom, so that they are *let alone*; but I am free to own that I am not of their sleepy set, and that as nothing would be more grateful to me than a distinctive mark, so nothing would so cheer and increase my efforts as the *chance* of obtaining it. I may get it or not, as may be, but at least it should be my misfortune and not my fault, for I believe with Macbeth that let a man screw his courage to the sticking place, and he'll *not* fail.

Now Sir, why should I, and others like me,—and depend on it there are plenty of such among the hundreds who are bringing up to the law,—why should *we* be deprived of this pleasure and benefit, because of an opposition chiefly composed of sluggards and simpletons? Assuming the fact, the question is a poser,—or why because others are unable or unwilling to hasten their steps, should *we also* be prevented travelling at more than a snail's pace? As the "Country Solicitor" most justly says, there neither is nor can be any real dispute as

to the *principle*, and if so, why postpone us because of a matter of *detail*?

I allow that in fairness, a proper notice should be given of the proposed change, (say a year) but subject to that, why not commence at once? If any extra expence be caused, let the fees on admission be proportionably raised, though by the plan alluded to, this would not be needed; and as to the examiners, I will never believe, that to escape a little extra trouble, they would refuse a really beneficial alteration. Their adoption of it would add to the great debt which the profession already owes them. For my own part, I should be most willing to pay handsomely towards the projected change, as doubtless would many others.

From this time I shall look forward to the probability of legal distinctions, and shall act accordingly, for the correspondence which has taken place, is certainly *constructive notice* to all "to whom these presents may come." I know what I *think* of most of the "gentlemen on the other side," though that is neither here nor there; but still I must theoretically consider them as comprised in one of the classes mentioned by the "Country Solicitor," for I cannot, however charitably disposed, conceive it possible that a man of talent or industry would oppose a plan whose object is to operate by gratifying emulation, and whose principle, founded in human nature, has been carefully and usefully applied by all other professions.

I believe, Sir, that you are by no means unfavourable to us, and I do hope and trust that you and other leading law periodicals will give the subject your sanction. I am not one of those "grave mortals" who declare that, unless the plan is taken up, the world will be in confusion within the year; on the contrary, I think that Parliament may continue to sit as usual, and that, as Sydney Smith says, "*good mustard and cress will, if duly watered, continue to grow*," notwithstanding the rejection of our suggestions—but I do say, that the question is one of considerable importance and anxiety to numbers, and as such, entitled to your notice. Without your support, its progress will be slow, but still sure—with it, success is both certain and speedy. We therefore claim it at your hands.

Birmingham.

ASPIRANS.

## EXAMINATION OF ARTICLED CLERKS.

To the Editor of the *Legal Observer*.

Sir,

HAVING been a constant reader of your valuable publication since its commencement, I have had an opportunity of observing from term to term the very considerable accession of numbers to the legal profession—and cannot be surprised, when on reviewing the questions at each examination, they prove to be of such an A B C character, as every candidate, however superficial his knowledge, ought to be

prepared readily and accurately to answer. My remarks on this score will chiefly apply to such clerks as may have served the period of their articles in town—for it is worthy observation, that the *majority* of questions hitherto proposed, has been confined to the *practice of the Courts*,<sup>a</sup> of which country clerks can possibly know little or nothing, inasmuch as every one must admit the *onus* of that is laid upon the shoulders of an agent; and moreover, by the rules of the examination, it is *expected* that answers should be given *at least to the greater number of questions in the two departments of Criminal Law and Equity*,<sup>b</sup> and it is expressly understood, that however correctly or satisfactorily a candidate may reply to the remaining branches, unless he discover an ample knowledge of those, he will be remanded into "du-rance vile," and his own painful reflections, until he again summons courage to appear before the dread tribunal! Now, with all deference to the superior judgment of such of my learned and highly respectable brethren as may be deputed to conduct this examination, I would ask what does one country clerk out of twenty know about the practice of the Courts or Equity, save just so much as he gathers from an agent's correspondence in the general matter-of-course routine of business? The method in which that agency business is transacted, it is impossible he can know, and peradventure never may! The Examiners must be aware that the studies of Country Articled Clerks (where they study *at all*, for there is a lamentable deficiency in this respect, not exclusively attributable to their own individual negligence or supineness!) are for the most part confined to Conveyancing, Bankruptcy, and Criminal Law: and upon such assurance, I may perhaps be permitted to suggest, that some distinction might be advisable between the questions proposed to such as have served their clerkship in the country, and such as have not!<sup>c</sup>

The observations I have advanced, will doubtless excite some conjectures in the minds of your readers, as to my motives: they are simply these—I would first see, (in common with every right-minded man) the *present* generation of lawyers gradually rising into note, and by unremitting habits of perseverance and integrity, winning their way to eminence and respectability:—their privileges and opportunity unfettered by the countless myriads, who at the close of every term, hoist the sable flag, and by the most ignoble, degrading competition, convert the glorious structure of our laws into a foul sink of traffic and paltry merchandize! Surely at this rate, the very Bench itself will shortly fall a victim to contention, or become the prize of some despicable lottery! And the result will be, that ere long, the once dignified profes-

<sup>a</sup> We doubt the accuracy of this statement.

<sup>b</sup> The official circular from the Secretary of the Examiners, does not bear out our correspondent.

<sup>c</sup> We believe that due allowance is made in considering the answers. Ed.

sion of the law, shall dwindle into insignificance, and

"Like the baseless fabric of a vision,

"Leave not a wreck behind."

A CONSTANT READER.

## SUPERIOR COURTS.

### Lord Chancellor's Court.

#### PRODUCTION OF PARTNERSHIP ACCOUNTS.— JURISDICTION.—COSTS.

*The personal representative of a deceased partner filed a bill for an account against some only of the other partners, one of whom by his answer admitted possession of some of the accounts, and that more were in possession of the common agent of all the partners, who were not very numerous, and their names were communicated to the plaintiff: Held, that plaintiff was not entitled to the production of the accounts in the agent's possession, without making all the partners parties to the suit.*

This was an appeal motion from an order of the *Vice Chancellor*, refusing, with costs, an application for the production of accounts relating to a partnership business, (in "*The Times*" Newspaper) on the ground that the accounts were not in the possession or power of the defendants to the bill, but were kept by the common agent of all the partners, and all were not made parties to the suit, although they were not very numerous, and their names were communicated to the plaintiff by the answer of one of the defendants. [The motion and arguments before the *Vice Chancellor* are reported *ante*, p. 140.]

Mr. *Richards* and Mr. *Romilly*, in support of the appeal motion, stated the commencement and continuance of the partnership of Mr. *Murray* in *The Times* Newspaper, from the plaintiff's bill, and from the answer of Mr. *Walter*, which was the same in substance with the answers of the other defendants, *Alsager* and *Lawson*, Mr. *Walter* alleging that the conveyance of his interest to Mr. *Murray* in 1819, of a moiety of a sixteenth share for 1400*l.*, was made subject to the original partnership deeds and to the will of his father, assumed to himself the right of putting an end to *Murray's* partnership at any time that he might choose to give notice of his intention to repurchase the share. He gave such notice in June, 1838, and the plaintiff, the widow and personal representative of Mr. *Murray*, asked for an account of the partnership profits. Mr. *Walter*, by his answer, admitted large profits, and insisted that Mr. *Murray*, up to his death in 1834, and the plaintiff, ever since received their share of them, without ever objecting to the accounts, which were always accessible to them, and to all the partners. If the accounts were so accessible, how could Mr. *Walter* now refuse to give the plaintiff inspection? By his first answer to the bill, he said some of the accounts asked for were in the hands of the

treasurer of *The Times*, and that he was not able to specify them; but upon exceptions being taken to that answer, and being allowed by the Master, Mr. *Walter* then further answered and set forth a schedule of these accounts, as he had before set forth in his first answer a schedule of the accounts and documents in his own possession, relating to the partnership concern. The *Vice Chancellor* held that the plaintiff was entitled to the production of the books and accounts in Mr. *Walter's* possession, but not to those in the possession of the treasurer, as the other shareholders, who were interested in the accounts, and for whom the treasurer was agent as well as for Mr. *Walter*, were not brought by the bill before the Court; and his Honour gave the defendants the costs of the motion, although he granted half of it: of that part also of his Honour's order the plaintiff complained.

The *Lord Chancellor*.—Is not this one of the numerous cases in which the Court declines jurisdiction over documents, when the parties interested in them are not before the Court?

*Counsel* for plaintiff.—This Court exercised the jurisdiction in *Walburn v. Ingleby*,<sup>a</sup> a case precisely in point. There, as in this case, books and other documents, the joint property of the defendants, and of other shareholders, who were not before the Court, were admitted by the answer of some defendants to be in the possession of a third person, the common agent of all; and the *Vice Chancellor* made an order on the agent to give inspection of the books, even against the consent of the shareholders who were not parties to the suit; and *Lord Chancellor Brougham* confirmed that order after full hearing, on the principle that the Court has a right to give the plaintiff whatever access to the books and accounts the defendants to the bill would be entitled to. Mr. *Walter*, by his answer, admitted that Mr. *Murray*, while alive, and the plaintiff ever since his death until she ceased to be a partner by reason of the notice, had access to the accounts. Then, if all the partners have unrestricted access to the accounts, why should not the Court order production of them to the plaintiff on the principle of *Walburn v. Ingleby*?

The *Lord Chancellor*.—Does Mr. *Walter* admit that he has control over the accounts in the treasurer's possession?

*Counsel for the Plaintiff*.—He admits he is a shareholder, and that all the shareholders may examine the accounts. His answer makes it a defence to the suit, that the plaintiff and her husband never objected to the accounts; that they might have inspected them and satisfied themselves that they were correct; and that they received their due share of the profits from time to time. The answer admitted Mr. *Murray* to have been a partner, and that his widow and personal representative was a partner up to the date of the notice to repurchase

<sup>a</sup> 1 Myl. & K. 61. See pp. 79-80, *et seq.*

in June 1838. Now, if a partner be entitled to inspect accounts while he is a partner, for which *Walburn v. Ingleby* is authority, he must be held entitled to inspection after he ceases to be partner until the partnership accounts are settled.

The Lord Chancellor, before hearing the counsel for the defendants, said, he thought this case was already decided by the practice of the court, as far as the production of the books.

Mr. Knight Bruce, and Mr. Bacon, for the defendants.—The Vice Chancellor gave costs to the defendants on the ground that there was no precedent for ordering documents, held as these accounts are, to be produced for inspection. The application had been made against the three defendants, and the partial order made by his Honor, being against Mr. Walter only, the other two, Mr. Alsager and Mr. Lawson, were clearly entitled to their costs. The three defendants had answered separately. One of the grounds on which the Vice Chancellor had refused the order for inspection, was, because some of the partners interested in the accounts, were not before the court. The plaintiff might have amended her bill after Mr. Walter's first answer, for she was then made acquainted with the names of all the partners, only thirty-six altogether. If these accounts were deposited in a box to which there were as many different locks and keys as there are partners, and each of them had a key for one lock, how could some of the partners give inspection in the absence of the others? Was not the common agent in the situation of such a box, in respect to these accounts?

[The Lord Chancellor.—The best answer to the plaintiff is, that she herself claiming to be a partner, is not able to give or have inspection of the accounts.]

Counsel for the Defendants.—If the bill contained a charge of collusion, some case would then be raised for the consideration of the court. Motions of this sort coming constantly before the Vice Chancellor, the practice is better understood in his Honor's Court. When a defendant admits deeds, and says they are not in his possession, but under joint control, the Vice Chancellor always refuses an application for production of them, until all the joint owners are before the Court. His Honor's order in this case was strictly according to the practice. The learned judge whose judgment in *Walburn v. Ingleby* was referred to, was mistaken in his reasoning (p. 83), and besides, that case did not involve partnership accounts; the object of some of the partners was to get into the common chest money obtained by the others. The prayer of this bill was for partnership accounts; the plaintiff did not file the bill for herself and other partners, and her apology for not making all the partners parties, was, that she did not know them, so that the numerosness of the partners was not alleged as an excuse, nor ought the allegation of ignorance of their names be admitted, as the names were communicated to the plaintiff by Mr. Walter's answer, but she did not choose to

amend her bill. The defendants objected to expose their partnership concerns unnecessarily; the plaintiff was no longer a partner, and the absence of some of the partners was quite conclusive against the motion.

Mr. Richards in reply.—Eight out of the thirty-six partners were out of the jurisdiction, so that all of them could not be brought before the Court. Could the treasurer refuse inspection of these accounts to Mr. Walter, because the other partners did not join him in asking for them? Did Walter allege that the treasurer refused to produce the accounts, or that the other partners gave him notice not to produce them? The authority of *Walburn v. Ingleby*, the only case on this point, was clearly in favor of this application.

The Lord Chancellor.—This was the case of a plaintiff claiming to be a partner filing a bill for an account against three partners only out of many, alleging that she does not know the other partners. One of the defendants says in his answer, that there are some documents in the hands of the treasurer, the common officer of the defendant and other partners named in the defendant's answer. The motion for these documents is against that one defendant, the other two defendants have not by their answer made any admission on which this application could be made. The order could be made only against that one defendant, but the Court could not make the order against him, unless it is in a situation to compel him to comply with the order. It was not shewn that it was in the power of this defendant to produce the documents. He is not in possession of them by himself or his agent, nor has he such control over the common agent of the partners as would enable him to produce these documents without the consent of the other partners, who are equally interested in them; and they are not before the court. It is true, the case of *Walburn v. Ingleby*, as it is reported, and as far as it is reported, is quite against this view of the jurisdiction. As the order there was made by the Vice Chancellor first, and then affirmed by the Lord Chancellor, we must presume that there was some peculiarity in the circumstances of the case that is not stated in the report, which is too scanty,—only half a page of the facts—to consider it an authority for overturning the established practice of the court, in motions of this kind. The only part of the report that touches on this point, is upon the application to suspend the order for production until the appeal from it to the House of Lords should be decided. What became of that appeal does not appear anywhere.<sup>b</sup>

Mr. Knight Bruce.—The case was lately referred to in the Judicial Committee of the Privy Council, and Lord Brougham said, there were special circumstances.

The Lord Chancellor.—This application is refused, with costs.

<sup>b</sup> The appeal was withdrawn, it being useless to proceed with it after the Lord Chancellor had refused the application to suspend the order for inspection.

Mr. Richards asked if that part of the *Vice Chancellor's* order was to stand by which his Honor ordered the plaintiff to pay the defendant's costs, although he granted part of the application, which was for production of the documents in the defendant's own possession.

The Lord Chancellor said it was like an appeal, in which part only of the order appealed from is varied, in which case the appellant pays costs.

Motion refused, with costs.

*Murray v. Walter*, Sittings at Lincoln's Inn, August 7th, 1839.

### Queen's Bench.

[Before the Four Judges.]

#### EVIDENCE.

*The contents of a deposition made by a servant of a petitioning creditor, as to an act of bankruptcy committed by a trader, may be used by the assignees of that trader against the petitioning creditor, though the party who made it is alive, and could have been produced on the trial.*

*Such an affidavit is not like a deposition in a suit in Chancery, or the examination of a witness in a Court of Law, and can therefore be employed against the party who has previously used it for his own advantage.*

This was an action to recover from the defendant, in his character of secretary to the Northern and Central Bank, a sum of money which had been paid by the bank on account of Strutt, after, as it was alleged, the directors knew that he had committed an act of bankruptcy. The cause was tried before Mr. Justice Colman, at Liverpool, when the plaintiffs, to prove that the act of bankruptcy was committed on a particular day, offered in evidence an affidavit of the fact made by a person in the service of the bank, and used by the defendant on behalf of the bank in prosecuting the commission. The admission of this evidence was objected to, but the learned Judge received it, and the plaintiffs obtained a verdict. A rule had since been obtained to set aside that verdict and have a new trial, on the ground that this affidavit had been improperly admitted in evidence.

Mr. Creswell and Mr. Alexander shewed cause.—The affidavit was admissible in evidence, and in the progress of the cause might be used against any person who had before used it for his own advantage. If a party applying for a rule or opposing one uses an affidavit, though made by a third party, it may afterwards be read against him, for by using it he adopts it, and makes its statements his own. The reason of this proposition is clear, and it is fully supported by the authorities. *Harmer v. Davis*;<sup>a</sup> *Leadbetter v. Sutt*;<sup>b</sup> *Gervis v. The Wootton Canal Company*;<sup>c</sup> *Gibbons v. Phil-*

*lips*.<sup>d</sup> [Mr. Justice Patteson.—Was there not a case from Chester in which this question was discussed.] *Inglis v. Spence*<sup>e</sup> shows that when a party had once admitted the title of the assignees he cannot afterwards dispute it. There the party had written a letter addressed to the plaintiffs as assignees, and deprecating their proceeding against him, and the letter being proved, he was not permitted to dispute the fact which he had thus admitted. That was a much stronger case than the present; for here the affidavit alleged a particular fact, and the party using the affidavit not merely admitted but relied on the allegation, and used it for his advantage. The person, too, who made this affidavit of the act of bankruptcy was one of the managers of the Chester branch of this very bank now represented by the defendant. In *Watson v. Wace*,<sup>f</sup> it was held that if a bankrupt has obtained his discharge from an arrest on the ground that his detaining creditors have proved under the commission, he has thereby precluded himself from afterwards disputing the commission in a court of law. Though, if the commission should be irregular, he may apply to the Great Seal for a *superseas*. These cases distinctly make out that a party availing himself of an affidavit in one proceeding, cannot, when his interest is changed, deny the affidavit which he has once used for his own advantage.

Sir F. Pollock, in support of the rule.—The cases cited on the other side are not disputed. And it is further admitted, that the fiat was issued on the suggestion of the defendant. But at the trial the plaintiffs did not make out the petitioning creditor's debt, nor the act of bankruptcy, in the sense of an act of bankruptcy, to support a commission. [Lord Denman, C. J. But does that meet the proposition that the statement which one man has produced as evidence against another person must be afterwards admissible as evidence against himself?] This may be as a general proposition, but it does not hold good where the person whose statement was formerly produced on a proceeding where only a statement can be produced, is alive and may be examined. If it is shewn that a particular individual has made an affidavit, or has used one made by another person, there is no doubt that, as a general proposition, such an affidavit may be used against himself. But it would be a monstrous position to assert that a man must be affected under all circumstances by the statements contained in every affidavit used by his attorney. The date of the act of bankruptcy cannot be made evidence against a third party, unless a knowledge of the date itself is brought home to the man who used the affidavit, unless it is shewn that he knew that such an act was in fact committed at that date. What did the defendant here do? He merely sent for an attorney, and stated his belief that Strutt was

<sup>d</sup> 7 Barn. & Cres. 529.

<sup>e</sup> 1 Crom. Mee. & R. 432; 5 Tyr. 8.

<sup>f</sup> 7 D. & Ryl. 633; 5 Barn. & Cres. 153; 2 Car. & P. 171.

<sup>a</sup> 1 Moore, 300; 7 Taunt. 577.

<sup>b</sup> 4 Bing. 623; 1 Moo. & P. 697.

<sup>c</sup> 5 Maule & Selw. 76.



in fact bankrupt, and therefore desired the attorney to make enquiries and take proceedings. What his attorney did under such a direction cannot be afterwards used against the defendant to fix him with knowledge of a particular act having been committed at a particular time. [Lord Denman, C. J.—But did not the defendant here act on the deposition which had been prepared?] Not more than a man acts on evidence which he produces in a cause, and on which he obtains a verdict, and acts on that verdict by taking the damages and costs awarded under it. Had the rule now contended for been in existence, the case of *Bernasconi v. Chambers*,<sup>8</sup> never could have been litigated. The party here who made the affidavit, was not a partner in the Bank. But it is said that he was a manager of it. That is the same thing as an agent. Now he did not make this affidavit in the discharge of his duty as an agent, and his principals therefore cannot be affected by it. The mere circumstance of his being the manager of a bank cannot make all that he does and says evidence against the directors who employ him. In *Brickill v. Hulst*,<sup>h</sup> it was held that in an action of trover for taking the goods of the plaintiff an affidavit made by the officer under the interpleader act respecting the said goods was admissible in evidence to prove that the officer who seized the goods was the servant of the sheriff. But that very case shews that the statements in an affidavit can only be used against the person who made them. And if it goes further, than it is submitted it requires to be reconsidered; but even there the Court proceeded chiefly on the ground that the affidavit proposed to be put in evidence, was an affidavit used in the course of the proceedings in the very cause, on the trial of which it was offered in evidence. The Court took a distinction between such a document, and a deposition in Chancery. Now this was a deposition, and it was made in a proceeding in bankruptcy, and not between the same parties: it is therefore inadmissible here. In *Atkins v. Humphreys*<sup>i</sup>, Lord Chief Justice Tindal refused to receive evidence of this sort, observing that the question was not the same, nor the parties the same. The cases cited on the other side merely establish this rule that where a party has for his own benefit in one instance declared a particular fact, he shall not be permitted for his own benefit in another instance to deny that fact. That rule does not touch the present case.

Lord Denman, C. J.—It appears to me that this deposition, or whatever else it is called, is clearly evidence against this defendant. In this case the defendant has used the testimony of a servant of the bank establishment to prove an act of bankruptcy, which he has proved, not by stating in general terms that the party has become a bankrupt, but by giving in a formal deposition particulars of an act of bankruptcy. The banking company afterwards used this deposition, and therefore, as it seems to me, recognised and adopted its statements. This is

totally unlike the evidence of a witness in a court of law. It seems to me, therefore, not necessary to enter into a discussion as to the degree to which a party is bound by the various parts of a witness's evidence at *Nisi Prius*. But when a company sends its agent to make a statement as to an act of bankruptcy committed on a particular day, and afterwards, with a full knowledge of its contents, deliberately uses that statement, it would be quite unreasonable to say that the company should not afterwards be bound by a statement thus procured and employed for its own advantage.

Mr. Justice Littledale.—I am entirely of the same opinion. The deposition may in fact be treated as made by one of the bank directors themselves.

Mr. Justice Patteson.—I do not mean to depart from the distinction laid down by this Court in *Brickill v. Hulst*, but here a defendant has sent his servant to depose to a certain fact, and has afterwards deliberately and with a full knowledge of its contents used that deposition. There is no magic in words, and it is not because you choose to call an instrument a deposition instead of an affidavit, when both bear exactly the same character, that you can get out of the consequences of using it. It is a different thing with the deposition of a man in a chancery suit, for he is then like a witness in a court of law,—he may be examined and cross-examined, and the party who calls him is not to be bound by all he says in answer to the questions put to him.

Mr. Justice Williams.—No question of this sort could have been raised if the defendant himself had made this affidavit. It is the same thing though not he, but his agent made it; and the defendant is bound by the contents of the affidavit, because he, with a full opportunity of knowing the contents of it, used it for his own benefit.

Rule discharged. *Gardner and others, assignees of Strutt v. Moulst*. Q. B. F. J. T. T. 1839.

### Queen's Bench Practice Court.

REMOVAL OF INDICTMENT FROM QUARTER SESSIONS. — PROSECUTOR'S COSTS. — LIABILITY OF DEFENDANT'S SURETIES.

*In the case of the removal of an indictment by certiorari from the quarter sessions, the defendant's sureties are liable to pay the costs of the prosecutor, although the statute 5 W. & M. c. 11, does not expressly direct it to be done, and there is no undertaking to that effect in the recognizance.*

Channell had obtained a rule calling on Boys and Williams, the sureties of the defendant, on the removal of an indictment preferred against him at the quarter sessions, on its removal into this Court by *certiorari*, to shew cause why they should not pay the sum of 37*l*. 9*s*. 5*d*., the costs taxed by the Master for the prosecutor of the indictment, or why their recognizance should not otherwise be estreated. The recognizance was under the provisions of the statutes 5 W. & M. c. 11,

<sup>8</sup> 2 Nev. & Per. 426. <sup>h</sup> 1 Wil. Wol. & Dav. 610.

<sup>i</sup> Moo. & Mal. 523.

s. 2, and 8 & 9 W. 3, c. 33, s. 2, and was in the following terms:—"London: Be it remembered that on the 1st day of February, in the first year of the reign of our Sovereign lady Victoria, by the grace of God, &c. Theophilus Bezant, now a prisoner in her Majesty's gaol of Newgate, but late of Critchell Place, Hoxton, in the county of Middlesex, gentleman, George Mence Boys, of Abchurch Lane, in the city of London, accountant, and William Williams, of No. 6, Rood Lane, in the said city, came before me, Sir Jno. Patteson, Knight, one of her Majesty's Justices of the Queen's Bench, and acknowledged to owe to our said lady the Queen, the sums following; that is to say, the said *T. B.* the sum of 200*l.*, and the said *G. M. B.* and *W. W.*, the sum of 100*l.* each, of lawful money, &c. to be levied upon their several goods and chattels, lands and tenements, to her Majesty's use, upon condition that if the said *T. B.* shall appear in her Majesty's Court of Queen's Bench, at Westminster, on the first day of next Easter Term, and shall plead to all and singular indictments of whatsoever misdemeanours whereof he stands indicted, and at his own proper costs and charges shall cause and procure the issue or issues that may be joined thereon to be tried in the same term, or at the Sittings at *Nisi Prius* to be holden after the same term in and for the city of London, if the said Court shall not appoint any other time for the trial thereof, and if the said Court shall appoint any other time, then at such other time, and shall give due notice of the said trial to the prosecutor or his clerk in Court, and shall appear from day to day in the said Court, and not depart until discharged by the said Court, then this recognizance to be void, or else to remain in full force.

"Taken and acknowledged, &c.

(Signed) "J. Patteson."

The indictment was preferred against the defendant, for an indecent assault, at the quarter sessions, and removed by *certiorari* to this Court. The defendant was convicted, and the object of this application was to compel the payment of the prosecutor's costs by the sureties.

*Kelly* now shewed cause, and contended that the liability of the sureties must depend entirely upon the terms of the recognizance. The defendant obeyed all the terms for the performance of which the sureties became bound, and therefore, no liability arose on that; and then a question arose whether the statutes under whose provisions the recognizance had been entered into, imposed any such term as that sought to be imposed. The words of the section of the act of W. & M., were, "that if the defendant prosecuting such writ of *certiorari* be convicted of the offence for which he was indicted, then the said Court of K. B. shall give reasonable costs to the prosecutor, if he be the party grieved or injured, or be a justice of the peace, mayor, bailiff, constable, &c., who shall prosecute upon the account of any fact committed or done, that concerned him or them, as officer or officers to prosecute

or present, which costs shall be taxed according to the course of the said Court; and that the prosecutor, for the recovery of such costs, shall within ten days after demand made of the defendant, and refusal of payment, on oath, have an attachment granted against the defendant by the said Court for such his contempt; and that the said recognizance shall not be discharged till the costs so taxed shall be paid." The prosecutor in this instance, could not be said to be within the meaning of this clause, because he was not injured, nor was he either of the officers named. The statute of W. 3 made the former act perpetual, and by the 2nd section authorised the recognizance to be taken before a justice of this Court, as well as before any of the justices of the courts where the indictment was preferred. The case therefore, was carried no further by its provisions, and there was no pretence for saying that either under the terms of the recognizance of the act the sureties could be made liable. A case of a similar description, *The King v. Tomkins*, had occurred in M. T. 1831, of which Mr. Robinson of the Crown Office, had furnished a MS. report. There, after final judgment, the costs were taxed, and an application made for an attachment. A motion was afterwards made to estreat the recognizances of the sureties, and the Court made an order for the payment by them of 20*l.*, and directed that the recognizances should otherwise be estreated. The facts of that case, however, did not appear, and it was uncertain, therefore, whether the Court, under such circumstances as appeared in the present instance would have made the order. The bail had fulfilled all the terms of the recognizance, and if they were now compelled to pay the costs, it would be under a law made by the court, and not founded upon the statute. In *The King v. Teul and others*, 13 East, 4, an application was made by the bail to discharge their recognizances, and the court refused to do so until the taxed costs were paid to the prosecutor. That differed, however, from the case now before the court, because, there, if the recognizance had been discharged, the defendant as well as the bail must be released. The sureties, however, could not be deemed liable to pay a sum which they never undertook to guarantee, and if their liability could be said to arise on the recognizance, the question should be tried on a proceeding on the recognizance. It was submitted, therefore, that the rule must be discharged.

*Channell* in support of the rule.—The statutes and the recognizance must be construed together, and this case must be decided upon the principle which it was the object of the former to support, which was the prevention of the too easy obtainment of writs of *certiorari*. The provision which referred to the "party grieved or injured," must be construed liberally. *The King v. Inledon*, 1 M. & Sel. 268, shewed that the person entitled to costs must be in some way personally aggrieved; and surely this was a case in which the matter was of a personal nature. The practice of the

Court had always been that the sureties in such cases should be liable to the costs.

*Cur. adv. vult.*

*Williams, J.*, delivered judgment in Trinity term.—The question in this case was, whether the recognizance, being in the form always used, is complied with; and whether it ought to be discharged, as all that is contained in it, in terms, is actually done. The rule was resisted on the ground that the recognizance has been strictly performed; and that as the payment of the costs is not provided for in it, and it is not a term which the Court ought to impose on the sureties. I thought that there was considerable difficulty in the case, and there is no decision on the subject that I can find in any printed report. It was contended by *Mr. Kelly* that the recognizance should be discharged. He did not carry his argument to that extent, but he contended that it ought not to be enforced, and should remain in Court to have whatever effect it might by law. Indeed the *King v. Teal* is an authority against the course I have suggested. There the application was, that on payment of the whole amount of the recognizance, which was 40*l.*, the recognizance should be discharged. The motion was, however, refused, on the ground that there was an ulterior liability for costs. When, in this case, it is said that the recognizance shall remain for such purposes as by law it may be available for, it is difficult to see in what way it may be put in force, except as in the *King v. Teal*, and that is to make the parties responsible for the costs. However, the decision of the present case does not rest there, because I have been furnished with another case, which certainly came before some Court, though I cannot learn whether it was this or the full Court. I have got the rule *nisi*, the affidavits, the names of the counsel, and the form of the rule which was granted. The rule *nisi* called on the sureties to shew cause why the recognizance should not be estreated. The case came on for argument, and the rule absolute was granted in these terms.

"Friday, 25th November, 1831.

Berwick-on-Tweed. } Upon reading the several affidavits of George  
The King } How, and Thos. How,  
v. } and upon hearing counsel on both sides, it is  
*Wm. Hoppes Tomkins* } ordered, that if George Mearning and Thomas  
and others } How, the bail for the defendants in this prosecution do pay to the prosecutors or their attorney, on or before the second day of next Term, the sum of 20*l.* a-piece, being the amount of the recognizance in the prosecution, the rule made this term that they should shew cause why their recognizances should not be estreated into the Exchequer, be discharged; and it is further ordered, that if such several sums of 20*l.* be not paid on or before the 2d day of next Term, then the said recognizances of the said bail (or of such of them as shall not

have so paid the said sum of 20*l.*), shall be estreated into the Exchequer.

"*Mr. Wightman* for the prosecutors.

"*Mr. Archbold* for the defendant.

"By the Court."

That appears undoubtedly to have been done on an affidavit of facts similar to the present, and in that case as well as in this, all that the recognizance required in terms, was done, and yet the Court ordered that the recognizance should be estreated unless the money was paid. That was the case of *The King v. Tomkins*, and as I have got all the original documents, there is no doubt that it is an authority. *Mr. Robinson*, of the Crown Office, has also furnished me with a MS. note of the late *Mr. Dealtry* of that office, of a case of *Rex v. Chamberlaine*, which occurred in Hilary Term, 26 Geo. 3, where recognizances were respited on the sureties' undertaking to pay the costs. In that case, therefore, there was an express direction—that the recognizances should be estreated, unless the parties paid the prosecutor's costs. In the case of *The King v. Creevy*, 1 M. & Sel. 273, which is material for another point, it is well known that the sureties did pay the costs of that prosecution. Inasmuch, therefore, as this has been the form of recognizance which has been always used, and this has also been the practice which has been observed in such cases, and as, moreover, it cannot be contended that this recognizance ought to be discharged, I cannot understand for what purpose it can remain in Court, unless for the purpose that the sureties should be responsible for the costs; the rule must in consequence be made absolute.

Rule absolute.—*Rex v. Bezant*, T. T. 1839.  
Q. B. P. C.

## THE EDITOR'S LETTER BOX.

A correspondent requests us to give a hint on the following subject: "When a counsel has no further occasion for his brief, instead of returning it to his client, he (unknown to the attorney) hands it over to a reporter, who detains it, without the least regard to the inconvenience occasioned to the attorney, who must, at the taxation of his costs, produce his briefs to the master. The loss of time and trouble caused in tracing a brief to the reporter who has it in his keeping, will readily be imagined." We have no doubt that the learned reporters referred to will cure this evil, so far as they can conveniently.

We quite agree with a learned and able contemporary, that the several departments of the profession should not quarrel with one another. We therefore doubt the propriety of inserting the letter of "A Barrister" of Lincoln's Inn.

The letters not inserted this week shall be noticed in our next number.

# The Legal Observer.

SATURDAY, SEPTEMBER 28, 1839.

— "Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## THE PRIVATE BUSINESS OF THE HOUSE OF COMMONS.

WE have already printed (*ante*, p. 331) the Second Report of the Select Committee of the House of Commons on Private Business, and we then promised to advert to the evidence appended to the Report, which is fully as important as the Report itself. The private business of Parliament is that part of its proceedings which comes peculiarly before the profession. Here politics are laid aside, and Whig and Tory, Conservative and Radical, are mixed up together, and act without distinction of party.

Our readers are aware that in the Session of Parliament which has just ended, a new arrangement was made with respect to the Committees to which private business is referred, which, briefly stated, was greatly to reduce the list of members on the Speaker's list, that is to say, members locally interested in the matter to which the bill had reference, and to add certain "selected members" to each Committee, and to require the constant attendance of such members. The new plan has now been tried for one Session, and it will be well to see how it has turned out in the opinion of its chief originators and promoters. We have read, therefore, with much interest, the evidence of Mr. Estcourt, the Chairman of the Committee of Selection, who, having watched the proceedings under the new system from beginning to end, is on this account, as well as from his great experience in the private business of Parliament, well qualified to give an opinion on the subject. This gentleman informed the Committee that "a circular letter was sent to each member of the House requesting that the Committee

might be informed whether the member to whom such letter was addressed had any objection to serve on a Private Bill Committee, and if he had no objection, to state at what period of the Session it would be most convenient for him to serve; to these letters a very considerable number of favourable answers were returned. There were several, perhaps fifty or sixty, in which the members altogether declined to serve; but in almost every instance of refusal it was accompanied by a statement of inability to serve on account of the pressure of important public or professional business; there were also a great many letters to which no answers at all were returned, but as the circular had been issued not a great while before the Easter recess, it was conceived, and ultimately ascertained, that some of those letters never reached the members to whom they were addressed. I mention this the more particularly, because as to about 300 letters favourable answers were returned, they were encouraged to believe that notwithstanding the plan was of a novel character and bore somewhat of the complexion of restraint, it was, generally speaking, not unacceptable to the House." There seems, indeed, to have been little or no difficulty in getting members so selected to attend, while considerable difficulty was found in getting members on the Speaker's list to attend. "It is satisfactory to observe," says Mr. Estcourt, "that notwithstanding the novelty of the arrangement, and that members were consequently very little acquainted with the necessity of their attending punctually upon the Committees on which they were summoned, there have been only four instances in which Committees have dropped in consequence of the non-attendance of the selected members,

and al. nose Committees were revived on the following day, under the orders of the House;" whereas "it frequently happened that an insufficient number of members upon the Speaker's list was in attendance, and many Committees would have dropped had not the Committee of Selection thought it expedient to authorize the individual member of their Committee to act upon his own responsibility, and to select and place upon the Committee so in danger of dropping other members who were found accidentally about the House, in order that they, acting as additional selected members, might assist in completing the quorum." Mr. Estcourt is therefore for abolishing the Speaker's list altogether. "As we have found," he says, "from experience that very few members did apply on account of the local interest of their constituents, as we have found great readiness to attend on the part of the selected members, while at the same time we have found that few of those members who were on the Speaker's list were disposed to attend, I presume to think that if the whole of the Committee were to be constituted of members selected, there would be a greater probability of a good attendance than if any reliance were placed upon the Speaker's list."

Another proposed alteration is as to Divorce Bills. In the last Session these Bills were "for the first time committed to a Select Committee, to take charge of which the Committee of Selection selected seven members of the legal profession as being peculiarly well qualified to conduct inquiries so delicate, and often so intricate;" and Mr. Estcourt "conceives that the intention of the House would be most fully accomplished were all the Divorce Bills inquired into by one and the same Committee, and he suggests that a Committee of five or seven members, conversant with the law, should, at the commencement of each Session, be appointed as a Select Committee, to whom might be consigned every Divorce Bill."

"I should also," he says, "recommend that in future the Committee of Selection should refer all the unopposed Bills to the Sub-Committees on Petitions for Private Bills, each of which Committees would probably agree among themselves upon the attendance of three of their members, in weekly succession, to take charge of such unopposed Bills as might be consigned to them."

These are the principal alterations proposed as to the Committees themselves;

there are certain others as to the forms of Bills, with regard to which we have made ample extracts from the evidence of Mr. Tyrrell, which will be found in our Monthly Record. The suggestions of Mr. Estcourt receive additional weight from the Report of the Select Committee, which, after calling attention to his evidence, "earnestly recommend to the House steadily to persevere in the [new] plan, with such amendments as have been suggested by Mr. Estcourt, or may be desirable from further experience."

We sincerely trust that the Committee will continue their exertions until a fitting Tribunal is formed for the disposal of private business. It is to be remembered that, as respects the rights of property, this is often of immense importance. The railway business, which

"Like some earth-born giant spreads  
Its thirty arms along the indented meads,"

demand a Court of itself; and the number of public companies and undertakings requiring parliamentary aid by means of private bills are daily increasing. We are happy to corroborate, so far as our experience allows, the evidence of Mr. Estcourt as to the improvement of last Session, but he gives but too correct a description of the proceedings of many Committees sitting even in this period, when he says that they "would have dropped" if they had not been kept alive by impounding "*members who were found accidentally about the House,*" and who of course knew nothing of the matter. Now we think, to say nothing of the great and unnecessary expense to the parties, that this is not the way business should be conducted. We are satisfied that by a proper distribution of the private bills much might be done. If the responsibility were limited, and the "working members" ascertained and employed, much of the present confusion would be avoided. We are glad, therefore, to see public attention directed to this important subject, and we shall watch the future proceedings and the result with interest.

## ADMISSIBILITY OF EVIDENCE.

### ANCIENT FOOTPATHS.

On an indictment tried at the last assizes for Hertfordshire for obstructing ancient footpaths, the prosecutor's counsel proposed giving in evidence the verdict of a jury in a

former action between the same parties, as touching the rights of way now in dispute.

The point was stated to be quite *de novo*, and in the absence of any direct authorities in support of such a course of proof (though incidentally alluded to in Starkie), Lord Denman refused to receive it.

The indictment contained twenty-three counts, and related to several ways. His Lordship refused to try the question relating to the whole of them, and required the prosecutor to elect on which he would take the opinion of the jury, which was accordingly done.—*Reg. v. Blow*.

On this subject, which has long been one of doubt (*vide* Roscoe's Evidence, 3d edit. 106), Lord Denman's ruling is not likely to become the subject of discussion in the term, as a conviction was obtained.

## THE LAW OF ATTORNEYS.

### AUTHORITY TO INSTITUTE A SUIT.

A SOLICITOR who takes upon himself to file a bill in the name of a client without any or a sufficient authority for that purpose, will, on application to that effect, have to pay the costs, the bill being dismissed. *Wright v. Castle*, 3 Meriv. 12; and in *Wilson v. Wilson*, 1 Jac. & W. 457, the names of persons made plaintiffs in a bill without their authority were ordered to be struck out with costs to be paid by the solicitor, their application having been made without any delay after they were apprised of the fact. And see the other authorities cited, Maugham on Law of Attorneys, 450. The same rule applies to a co-plaintiff, as appears by the following case:

This was a motion, made after replication, on behalf of Mr. William Tabernor, one of the co-plaintiffs in the suit, that his name might be struck out as one of the plaintiffs to the bill filed in this cause; and that his costs of suit and of this application might be paid by the solicitor who filed the bill. It appeared, on affidavit, that William Tabernor had been made a co-plaintiff in the suit without his authority, sanction, or concurrence; and from circumstances discovered by him, it appeared, that his interests in the matters of the suit were quite adverse to those of the other co-plaintiffs. The *Master of the Rolls*.—There is no doubt in this particular case, although there is sometimes a difficulty where a party has, by acquiescence, entitled the defendants to protection as to costs. The question is, whether Mr. Tabernor is bound to remain in conjunction with the other plaintiffs, or whether he is to be released from that union. There is evidently a question on the bill, between William Tabernor and the other plaintiffs; and there being such a question, it cannot be discussed between the co-plaintiffs; he is therefore entitled to be severed. But at whose costs is he to be relieved? The first consideration is,

whether Keene, the solicitor, had authority from William Tabernor to file a bill:—it is admitted that he had not; Keene is therefore answerable. According to the strict practice, there ought to be a warrant in writing to authorise the solicitor to commence proceedings; it is sometimes, however, dispensed with, at the peril of the solicitor. Had the party here acquiesced, it would be another question; but no such point arises. There is no proof of any acquiescence; and without any imputation on the solicitor, who probably conceived that he did the best, yet he has done an act for which he had no authority, and the application must, therefore, be granted with costs. *Tabernor v. Tabernor*, 2 Keen, 679.

## CHANGES IN THE LAW

### IN THE LATE SESSION OF PARLIAMENT.

#### No. XI.

#### METROPOLITAN POLICE COURTS.

2 & 3 Vict., c. 71.

*An act for regulating the Police Courts in the Metropolis.* [24th August 1839.]

*Continuance of the Police Courts and Police Magistrates.*—Whereas it is expedient to amend the several acts now in force for the more effectual administration of justice in the office of a justice of the peace in the several police offices established in the metropolis, and for the more effectual prevention of depredations on the river Thames and its vicinity: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that the several Police Courts now established under the names of the Public Office in Bow Street, and the Police Offices in the parishes of Saint Margaret Westminster, Saint James Westminster, Saint Mary-le-bone, Saint Andrew Holborn, Saint Leonard Shoreditch, Saint Mary Whitechapel, and Saint John Wapping, in the county of Middlesex, and Saint Saviour in the county of Surrey, shall be continued, and that the several persons appointed to execute the duties of a justice of the peace at the said Courts shall continue to execute the same there, and shall be justices of the counties of Middlesex, Surrey, Kent, Essex, and Hertfordshire, the City and liberty of Westminster, and the Liberty of the Tower of London, and magistrates of the said Courts, during her Majesty's pleasure.

2. *Her Majesty in council may alter the number and situation of the Courts. Limiting number of magistrates.*—And be it enacted, that it shall be lawful for her Majesty, with the advice of her privy council, to alter the number of the Police Courts, and to alter the number of magistrates appointed to any of the said Courts, and to order such changes to be made of the places in which they shall be holden within the Metropolitan Police District as shall be found expedient; and every such

Court shall thenceforth be holden in the place in or to which it shall be so ordered to be established or removed: Provided always, that there shall not at any time be more than twenty-seven such magistrates.

3. *Vacancies to be supplied by her Majesty from barristers.*—And be it enacted, that to supply such of the present vacancies and also such other vacancies among the magistrates of the said Courts which her Majesty shall think fit to supply, her Majesty may appoint a sufficient number of fit persons each of whom shall have practised as a barrister during at least seven years then last past, or who shall have practised as a barrister for four years then last past, having previously practised as a certificated special pleader for three years below the bar, to be magistrates of the said Courts; and any person so appointed, and also every magistrate already appointed to the said Courts or offices, may act as a justice of the peace in and for the said counties and liberties, although he may not have the qualification by estate required of other justices of the peace: Provided always, that no person hereafter to be appointed to be a magistrate of the said Courts shall act in his office until he shall have taken and subscribed before some justice or baron of one of her Majesty's Courts of Record at Westminster the oaths taken and subscribed by justices of the peace, except the oath of qualification.

4. *Magistrates, &c. exempt from serving on juries.*—And be it enacted, that the said magistrates, and their clerks, ushers, door-keepers, and messengers, shall be exempt and disqualified from being returned and from serving on any juries or inquests whatsoever, and shall not be inserted in any lists of men qualified and liable to serve as jurors.

5. *Appointment of clerks, ushers, door-keepers, and messengers.*—And be it enacted, that one of her Majesty's Principal Secretaries of State shall fix the number of clerks, ushers, door-keepers, and messengers to assist in carrying on the business of each of the said Courts, who shall be appointed, and may be dismissed at pleasure, by the Secretary of State; and the clerks now acting at the said several offices shall be continued the clerks of the said Courts during the pleasure of the Secretary of State; and no person shall hereafter be appointed chief clerk in any of the said Courts unless he shall be an attorney of one of her Majesty's Superior Courts of Law at Westminster, or shall have served as clerk in one or more of the said Police Courts or Offices, or as clerk to the justices of any division or special or petty session within the Metropolitan Police District, during at least seven years; and no clerk in any of the said Courts shall hold or have any other office or employment whatsoever, except any office or employment to which any such clerk has been appointed before the passing of this act with the sanction of the Secretary of State; and every usher, door-keeper, and messenger appointed to any of the said Courts shall be sworn as a constable, but shall only be empowered to act as a constable within the said Courts and the precincts thereof, unless

for the protection of the magistrates or of persons resorting to the Court, or, in case of being sworn in as special constables, in any urgent necessity in which the services of any one or more of them may be specially required by an order in writing from the Secretary of State.

6. *No magistrate or officer of the Courts to vote at certain elections.*—And be it enacted, that none of the said magistrates, clerks, ushers, door-keepers, or messengers appointed by virtue of this act shall, during the time that he shall continue in his office respectively, or within six months after he shall have quitted the same, be capable of giving his vote for the election of a member to serve in Parliament for the counties of Middlesex or Surrey, or for the city of London, or for the city and liberty of Westminster, the borough of the Tower Hamlets, the borough of Finsbury, the borough of Mary-le-bone, in the county of Middlesex, or for the borough of Southwark or the borough of Lambeth in the county of Surrey, or the borough of Greenwich in the county of Kent respectively; nor shall he by word, message, writing, or in any other manner endeavour to persuade any elector to give or to dissuade any elector from giving his vote for the choice of any person to be a member to serve in Parliament for any such county, city, or borough; and every such magistrate, clerk, usher, door-keeper, or messenger offending therein shall forfeit the sum of one hundred pounds, one moiety thereof to the informer, and the other moiety thereof to the use of the poor of the parish or place where such offence shall be committed, to be recovered by any person that shall sue for the same in any of her Majesty's Courts of Record at Westminster within the space of one year after such offence committed: Provided nevertheless, that nothing in this act contained shall extend to subject any such magistrate, clerk, usher, door-keeper, or messenger to any penalty for any act done by him at or concerning any of the said elections in the discharge of his duty.

7. *Receiver of Metropolitan Police to be Receiver under this act.*—And be it enacted, that the Receiver of the Metropolitan Police District for the time being shall be the Receiver of the said Courts, and shall receive all fees, penalties, and forfeitures, and other monies applicable to the purposes of this act, and shall pay quarterly the salaries, expences, and charges attending the said Courts and in carrying this act into execution, and shall make all such contracts and disbursements as shall be necessary for purchasing, hiring, fitting up, and furnishing fit buildings and offices for holding the said Courts, in such manner as shall be directed by one of her Majesty's principal Secretaries of State; and all the estate, interest, and property of and in all buildings so hired or purchased, and all buildings already hired or purchased for the like purposes, and the fixtures and furniture thereof, and all other things needful to be had for the purposes of this act, shall be vested in the receiver for the time being, who may sell, assign, and dispose of the same, or any part

thereof, under the like directions as need shall be; and the receiver shall prepare plans and estimates of all such contracts and disbursements as shall be needed for the purposes aforesaid, and shall deliver the same to one of her Majesty's principal Secretaries of State, and shall further do all such other lawful matters and things having relation to the business of his office, and towards putting this act into execution, as from time to time shall be directed by one of her Majesty's principal Secretaries of State.

8. *Extension of powers and duties of receiver when acting under this act.* 10 G. 4, c. 44.—And be it enacted, that all the provisions and enactments contained in an act passed in the tenth year of the reign of King George the Fourth, intituled "An Act for improving the Police in and near the Metropolis," relative to the drawing and accounting for monies which may come into the hands of the receiver of the Metropolitan Police District for the purposes of that act, and for auditing the accounts and taking security from the said receiver, shall be deemed to extend to the said receiver in respect to all monies which he shall receive under this act, as fully as if the same were herein enacted; and with respect to all the powers and liabilities of the said receiver, or any thing to be done by or any contract to be entered into with the said receiver, the execution of this act shall be deemed one of the purposes of the said act for improving the police in and near the metropolis.

9. *Salaries of magistrates, receiver, clerks, and officers.*—And be it enacted, that instead of the salaries heretofore payable to the said magistrates, clerks, and other officers of the said Courts, and to the said receiver of the Metropolitan Police District, there shall be payable out of the monies in the hands of the receiver such salaries as her Majesty shall direct, the salary to the chief magistrate not being more than twelve hundred pounds; and to each of the other magistrates not more than twelve hundred pounds; and to the receiver not more than one thousand pounds; and to the chief clerk in each of the said Courts not more than five hundred pounds; and to the second clerk in each of the said Courts not more than three hundred pounds; and the salaries to the other clerks and officers employed in the said Courts in due proportion with regard to their several stations and the duties they have to perform; and such salaries shall be paid quarterly, by equal portions, on the fifth day of January, the fifth day of April, the fifth day of July, and the tenth day of October in every year, the first payment to be made on the quarter day next after the passing of this act; and in case of vacancy in any of the said offices at any intermediate time, the person making the vacancy, or his executors or administrators, shall be entitled to a proportional part of his quarterly salary, according to the time elapsed between the vacancy and the last quarterly payment.

10. *In case of the establishment of a civil court for recovery of small debts, her Majesty*

*may appoint the metropolitan magistrates to take the duties thereof.*—And be it enacted, that after the passing of any act for the establishment of a civil court of summary jurisdiction for the recovery of small debts within the Metropolitan Police District, or any part thereof, to be holden before a Judge or Judges to be appointed by her Majesty, it shall be lawful for her Majesty to appoint all or any of the said magistrates to take upon them the duties of Judge or Judges of such civil court; and every magistrate so appointed, shall be bound to discharge the duties of a Judge of such Court, either exclusively or in conjunction with his duties as police magistrate, in such manner as Her Majesty shall think fit to direct; and the said receiver shall be bound to discharge any duties as receiver, treasurer, or accountant, which by any such act he may be required to perform in respect of such civil Court; and no such magistrate or receiver shall be therefore entitled to any other or additional salary than is provided by this act.

[To be continued.]

## MEMOIR OF EDGAR TAYLOR, Esq., F.S.A.

ALL who are interested in the character of the larger branch of the legal profession, and its standing and position in society, will desire to see a record of each eminent member of that class, as he passes off from the scene of his labours. In such an instance as the present, the record is of more extended value, as shewing that great professional success is compatible with unusual proficiency in literature, and extensive literary productions; and that with industry, even a short measure of life is quite sufficient for the attainment of both.

MR. EDGAR TAYLOR was the fifth son of Mr. Samuel Taylor, of New Buckenham, in Norfolk, and a descendant of Dr. John Taylor, of Norwich, the author of the Hebrew Concordance, a very learned and highly distinguished Presbyterian Minister of the last century, whose writings have not only been held in high estimation by some of the most eminent divines of the Church of England, but have in part had the honor, singular towards a non-conformist, of being republished by a bishop of that church. He was born at Banham, in Norfolk, on the 28th of January 1793. He received his education at Palgrave School, Suffolk, under Dr. Lloyd, a very excellent classical scholar.

In the year 1809, he was articled to his uncle, the late Mr. Meadows Taylor, of Diss, a solicitor of large practice, and the successor to a business which has now been carried on by his family for upwards of a century. He here acquired a good knowledge of law, and particularly of conveyancing; and also found



time in his leisure hours to attend to subjects of literature, and particularly to acquaint himself with the Italian and Spanish languages. In the year 1814 he came to London; and in 1817, he entered into partnership with Mr. Robert Roscoe, one of the sons of the celebrated Mr. Roscoe of Liverpool, the author of the *Life of Lorenzo de Medici*,—then also commencing the practice of the law, and opened chambers in King's Bench Walk, Temple,—beginning life, as he says himself in some notes left behind him, with only a very small capital, and that borrowed.

Of the nature and particulars of his private practice it will not be requisite to say much. He continued in partnership with Mr. Roscoe until that gentleman retired from the profession on account of ill-health, and he afterwards associated with him other gentlemen as partners, one of whom, however, died before him. It was two or three years after he began business that the writer of this memoir first knew him. The official establishment then consisted of one writing clerk only: at the time of his death it was amongst the most extensive of the agency houses in London.

In a memoir addressed to his own profession, it will not be out of place to state that his business arrangements were of the most accurate and complete nature. In all matters relating to accounts, particularly to those which strictly belong to the science of book-keeping, he was especially skilful and accurate. He was probably the first solicitor, or one of the first, who applied the Italian or double-entry system to solicitors' books. With the assistance of a friend, once his fellow clerk, but now an eminent accountant in the city, he arranged his books from the first upon this plan, and during his whole life they were so strictly kept, that, every bill for every business, finished or unfinished, being first made out, he had a balance sheet of the whole concern struck twice a year, shewing the results and state of the concern at those moments, and checking, as is the nature of the Italian system, every posting and the casting of every cash account. So particular was he in this matter, that even if, as occasionally happened, there were an error of only a single penny appearing on the balance sheet, he would keep clerks engaged, even for two or three months, in examining the accounts till it was found out. The following note appears in one of his private books of account, and was written by him two or three years ago:—"I have had the complete series of my accounts with my different firms copied into a small book, with a copy of the profit and loss accounts. This, for curiosity, shewing the progressive successful operations of 20½ years."

To his professional talents, it is not easy to do justice. He was a man of a very acute mind, and remarkable for his foresight and generalship. His own personal practice was principally in the Equity Courts. In the early stages of the most complicated suit he delighted to look forward to and provide for contingencies which could not occur till the

cause had advanced to stages requiring years to arrive at: his memory, or at least his method, was such that, on the contingency taking place, he had the whole previous arrangements in his mind. Though, latterly, the suits under his charge were very numerous, yet he always bore the particulars of each in his mind,—the objects of the suit, the parties to it, and the state in which it was. He rarely had to give two readings to any cause, however long its duration. Altogether, a man better fitted to the management of the most extensive business, even in its minutest details, can scarcely be conceived.

We have dwelt the more on Mr. Taylor as a thorough man of business, engaged in an extensive and successful practice, in order that, viewed with these serious occupations, his assiduous cultivation of jurisprudential and literary pursuits may be the more justly appreciated. We will now enumerate some of the subjects on which we happen to know that his pen was from time to time engaged. The most important of his works, "*Wace's Chronicle of the Norman Conquest*," his "*Book of Rights*," the "*Lays of the Minnesingers*," and his "*Translation of Grimm's German Stories*," are referred to in a notice in the *Morning Chronicle* of the 22d of August last (from which an extract is subjoined<sup>a</sup>); a notice in

<sup>a</sup> "Notwithstanding the occupation arising out of an extensive professional practice, and an active participation in public measures, he found leisure for literary pursuits. He was a frequent contributor to the periodical press, and our readers had not unfrequently the benefit of his labours. He generally published anonymously, but in 1833 he gave to the world a '*Book of Rights*' with his name, a valuable digest of constitutional acts from *Magna Charta* downwards, with able and original comments. He was attached to antiquarian and historical studies, as well as to the lighter literature which combines poetry with history. He was the author of an admired translation of the famous French metrical chronicle by Wace, entitled the "*Roman de Rou*." He composed a history of the German *Minnesingers*, with translated specimens, and was able, notwithstanding the sufferings of his latter years, to recreate his imagination by preparing a version of some of the admirable *Marchen* legends of the distinguished brothers Grimm, the banished Hanoverian professors. The second edition, under the title of "*Gammer Grethell*," was the last of his writings that left the press.

"But these lighter occupations never interfered with the discharge of sterner duties, nor with the more earnest studies founded on religious opinions. He sustained his severe bodily trials with fortitude and patience, and died full of the assurance of a Christian's hope, though he rejected many of the dogmata which constitute the faith of the more numerous Christian sects. He has left a name unassailed by reproach or imputation, and left the world without an acquaintance who does not lament his departure."

which we feel pretty sure we can trace the pen of an eminent German scholar, and an old and valuable friend of Mr. Taylor—a gentleman formerly leader on the Norfolk Circuit, but now retired from the bar. His “German Stories” were first published at an earlier date than that assigned by the writer in the Chronicle, and when Mr. Taylor was in the full enjoyment of his health,—we think in 1823 or 1824. We well remember his shewing us, on the first publication of those stories, the long and most interesting letter of praise and congratulation from the late Sir Walter Scott, published in the second edition of his *Stories*, from which we extract the following passage:—“I have to return my best thanks for the very acceptable present your goodness has made me in your interesting volume of *German Tales and Traditions*. I have often wished to see such a work undertaken by a gentleman of taste sufficient to adapt the simplicity of the German narratives to our own, which you have done so successfully.”<sup>b</sup>

To begin with his fugitive Legal productions:—He contributed many articles to the (*Quarterly*) “*Jurist*,” then, we think, edited by his friend, the late Mr. Henry Roscoe. The following we believe to be from his pen: On “the New Chancery Orders of 1828;” on “Parochial Registration” (two articles, in 1828 and 1832); and on “the History of projected Law Reforms in 1830, 1831, and 1832” (a most admirable article). He also was a frequent contributor to this journal. He wrote in it on all the subjects just named, and also on “the Local Courts Bill.” This latter project he powerfully assisted in defeating. With respect to it, he wrote, at the request of several influential members of the profession, a most able pamphlet, under the assumed name of H. B. Denton, Esq., entitled “*Lord Brougham’s Local Courts Bill examined*.” He had a few years before published another pamphlet on a previously pending bill, entitled “*An Estimate of the Brougham Local Court Bill*, by an Observer.”

It must not be supposed, however, that he was an opposer of legal reform. Where real and extensive, and not patchwork reform, could be brought about, he was most anxious to assist in the work; but he objected to the system adopted by too many of our Equity Judges of altering for the sake of being able to say that alterations had been made, and of deluding the public into a notion that these alterations were really the extensive improvements which the public voice required. An extract from the preface to his second Local Court pamphlet will best shew the views he always entertained on these subjects:—

“The following observations come from one who is as ardent a reformer of the principles and practice of our law as any one engaged in the work; and who on that account feels the more deeply the discredit brought on the cause by projects involving useless expense and unnecessary violence to the established

order of business,—needlessly injurious to the interests of large bodies of respectable individuals,—changing anything and everything as if it was only for changing sake,—and swelling enormously that legal patronage which already has so great a tendency to convert into timid subservients a body of men to whom popular interests must look for their most efficient defenders.

“When it is manifest that the whole good which can be accomplished by an enormous machine,—the extent of the effects of which on society no one can measure, and which involves an expenditure exceeding the whole cost of the administration of justice in the Upper Courts,—could be effected with the smallest disturbance of the present system, at little or no cost, and yet with the most extensive effect, and so guarded as to protect society to the utmost against any mischievous consequences; and when we nevertheless see that the wildest and crudest scheme, notoriously contrary to the opinion of the leading members of the profession, as well as of the Judges, is urged on by the eager wilfulness of two or three speculative individuals, and will most likely be supported by a House of Commons laudably anxious for reform of abuses, but necessarily ignorant of the details of such subjects, and naturally prone to be dazzled by the most showy scheme; it becomes high time to consider what all this is to lead to, and to ask whether, if free scope be given to this school of regenerators, the institutions which they are professing to reform will long exist elsewhere than in the page of history?”—

Besides the productions already mentioned, Mr. Taylor also wrote several articles in the *Westminster Review* and other periodicals, on other subjects connected with the state of the law,—particularly with reference to dissenters, and to that body of dissenters to which he belonged, and of which he was the legal organ for a long period of years.

The following were, we believe, among the general legal subjects he wrote upon:—“*Parochial Registration*,” “*the Registration of Voters*,” “*Admission, &c. of Attorneys*,” and “*the Regulations of the Inner Temple*.” His articles and pamphlets on matters affecting dissenters were very numerous. We find some letters of his as early as 1817, and again as late as 1834, on “*Religious Offences indictable at Common Law*,” on “*the Laws affecting Non-conformists*,” and on “*the Sense in which Christianity is part and parcel of the Law of the Land*.” An article in the *Westminster Review* of 1835, “on *Sir Robert Peel’s Dissenters’ Marriage Bill*,” was, we believe, written by Mr. Taylor, and we know that he frequently wrote on the subject of the *Marriage and Registration Laws*. In 1828, he wrote an article in the *Westminster Review* on the *Repeal of the Test and Corporation Laws*, and also published on the same subject, as a pamphlet, a very striking and argumentative letter to Sir T. Ackland, which, we think, went through several editions. A general statement of the legal position of dissenters, and of the grounds for their relief, was pub-

<sup>b</sup> See Gammer Grethell, ed. of 1839, p. 343.

lished by the deputies of the three denominations of dissenters, and rapidly passed through many editions. This, we believe, was drawn up by him. He wrote also on "the Title of Unitarian Dissenters to Endowments," and on "the Admission of Dissenters to the English Universities."

His articles on antiquarian and literary subjects were too numerous to allow of any full enumeration. He was deeply read in the literature of the middle ages, and communicated many articles to the *Retrospective Review* on subjects of that nature. We know that there are articles of his there, or in the *Monthly Repository*, or elsewhere, on "Conybeare's Anglo-Saxon Poetry;" on the "Epistolæ Obscurorum Virorum;" on "Physiophilis Specimen Monachologiæ," (an old German naturalist's satire on the monks of his time;) on "Las Casas and the Slave Trade;" on "Sir J. Mandeville's Travels;" on "Burton's Diary," (two articles); on "Sale's Koran, and the Sects and Tolerations of the Mahometans," (several articles); and on "Young and Champolion's Discoveries in Hieroglyphics."

He was greatly attached to Biblical literature and church history, and we find articles on "The Reformation in Spain;" on "The State of Catholicism in Germany and Silesia;" on "Wetstein," the celebrated author of the *Prolegomena*;" on "Scipio Ricci, Bishop of Pistoia;" on "The Life and Times of Archbishop Laud," (two articles); on Cave's *History of the Primitive Church*;" on "A newly recovered Work of Eusebius (the *Chronicon*);" on "The Culdees of Iona," (an old sect of the Scotch Church); and also on the "History of the Transmission of Ancient Books to Modern Times," and several Papers of Observations on the Controversy as to the Original Language of the New Testament.

He was an excellent linguist, and paid much attention to the structure of the modern tongues. We should have mentioned, amongst his contributions to the periodical press, an article on "The Hamiltonian System of Teaching Languages." We believe he acquired his knowledge of the German after he was in practice as a solicitor. We know that several years after he commenced business, he was in the habit of taking French lessons, and well remember more than once finding his French master waiting for him late in the evening, while he was finishing the heavy business of the day. He must have had a pretty good knowledge of Spanish, as we recollect his once reading, off-hand, a legal document of considerable length written in that language. His knowledge of Italian was so good as to induce that accurate publisher, Mr. Pickering, to request his assistance in revising the beautiful miniature editions of Italian Poets. Much of Mr. Taylor's time, in the last few years of his life, was spent in reading the Greek classics; and he has left a half printed work, the entire or nearly the entire manuscript of which, we believe, is finished, being a translation by himself of the

New Testament from Griesbach's edition. He had, in an earlier period of his life, been engaged on an English re-publication of Griesbach—an undertaking which required great editorial labour. He has, we believe, left several other, and some of them very considerable manuscripts, but what are their subjects, and whether any of them will be hereafter given to the world, we are unable to state. We understand that, among the rest, is a highly characteristic Diary commenced in his 21st year—carried on till within a short period of his death, and, in the course of its progress receiving from his hand the valuable addition of recollections of his earliest years—of all these we trust some account will be published, as we have reason to hope that a more extended biography than can be contained in a periodical journal will some day appear.

Mr. Taylor's style was remarkable for terseness, vigour, clearness, and originality of expression; his mode of reasoning a subject quite masterly. The pamphlet on *Local Courts*, to which we have already referred, is a model for a work of that kind—instead of being one of the decoctions of the common-place of the day, it is full of original thought. There is not a sentence in the whole sixty-four pages which has not a good idea and point in it; scarcely a word that could be touched without injury. Did our limits allow we would gladly have made some extracts, more especially as, though caused by a wild scheme now we hope set at rest,<sup>c</sup> it is upon a subject which, in some shape or other, will last as long as the science of jurisprudence itself. Nothing can be better than the full, fair, and spirited statement of the real point at issue, viz. the comparative advantages of the "*central*" system, with its unity of principle and practice, and its extensive bar and highly endowed bench, exercising mutual supervision, and the "*departmental*" system, with its alleged saving in speed and cheapness. The difficulties which must always beset *Local Courts*, and the ill-will and litigation engendered by them, are next pointed out, in a manner rapid, but most lively and convincing. The remainder of the pamphlet is occupied in examining the details of the bill. This is done with a facility of handling and a freshness and vivacity of diction quite delightful. It is full of wit and sarcasm; but every sally is weighted with some sound reason inclosed in it; and there is no personality, unless, indeed, we condemn as personality the laugh at the restless Chancellor's impatience to be talking about a favourite scheme, instanced, in his inability to wait the printing of the evidence on which the bill was founded; and seeing that this went to the whole and sole truth of the

<sup>c</sup> The new practice of creating a great variety of Borough and other Courts, without uniformity of system or of jurisdiction—some exclusive, some not—is, in a measure, however, a new form of it.

matter, it would have been difficult to have kept it in the back ground.

To return to our subject:—We ought not to conclude our remarks on Mr. Taylor's style without alluding to it as exemplified in those less important and more transitory productions of the pen, by which he was, after all, much better known to his friends and in his profession—we mean his business correspondence. He was by far the best writer of a business letter we ever knew. Rapid beyond conception, yet accurate and complete; clear and pithy to a marvel; unless, indeed, where the interests of his client required him to conceal rather than fully set out his ideas. In his letters, more than in any thing else, he was the wonder of the numerous clerks and pupils with whom, after the first few years, his office was always filled. He was in all things a constant subject of their observation and admiration; but well does the writer (who long studied under him) remember the surprise excited by his letters, evading, with consummate skill, the difficulties which could not be met, or meeting with the utmost boldness that which could not be evaded. And, while alluding to those who had the advantage of being in his office, and as a close to our enumeration of his intellectual qualities, the writer must add, as he is sure he well can, for all of them, that there never was one who did not, without hesitation, rate him as the first in all points of talent and business they had ever known.

Of Mr. Taylor's political and religious opinions it would not become us to say much here—all mention cannot be omitted. In both, he followed the steps of many generations of his ancestors; and though he differed widely in both from the bulk of his numerous personal friends in the profession, and from many of those out of the profession, we feel sure he was not the less esteemed by either the one class or the other, for quietly and consistently following those views, which all who knew him, knew him to entertain with entire seriousness and conviction. In his politics, he was a whig; at least, what some time ago was so called: in his religious opinions a Unitarian,—thinking always, however, much more of general liberty of conscience and dissent, than of sectarian differences.

He was for many years, as we have stated the solicitor of the Unitarian association, and a very leading man in all matters affecting the civil position of dissenters. He conducted the various applications for leave to perform marriages made by the Unitarians between the years 1825 or thereabouts, and the passing of the late Marriage Bill; and in this and other public matters, became well acquainted with many of the leading public characters of the day. He was not only nominated one of the commissioners for collecting together and examining the old dissenting registers, but was, we believe, deputed by the government to select two of the other commissioners, one from among the Independents, and one from among the Baptists, on whom the reliance of their respective bodies could be placed. In

the business of this commission he took great interest; and as of everything else he ever undertook, he made himself thoroughly acquainted with its details. He was attending to them almost to the day of his death.

Notwithstanding his political and religious opinions, he was sent for by Sir Robert Peel, on, we believe, the day after that statesman came into office in 1835, to give his opinion respecting a bill Sir Robert proposed to introduce respecting the marriages and births of dissenters; and on his stating that he was surprised that, with his known political and religious opinions, he should be sent for, Sir Robert replied that it was on that account especially he had sent for him; and that having made up his mind to carry such a measure through, and to forego his own scruples, he immediately looked about for one who would command the confidence of the dissenters. We must mention another anecdote very honorable to Mr. Taylor, though exactly what all who knew him would have predicted. It is, that he refused an offer made, and afterwards pressed upon him, by a late Lord Chancellor, of an important and lucrative office or secretaryship connected with the patronage of the Established Church, merely because it was so connected.

One of the last matters of importance in which he was engaged, was the appeal to the House of Lords, lately argued and still waiting judgment in the *Lady Hewley* case. He was selected to manage this matter jointly with the former solicitors of the trustee by a large body of gentlemen in Lancashire; and was added to the business, not out of the slightest distrust or disrespect to the able gentlemen before engaged, but merely for the great reliance placed in his talents and abilities by the numerous body of Unitarians in the north of England. Though confined entirely to his room for the last eight or ten months, he devoted great attention to this matter; and partly to his exertions made in his sick room are to be attributed the able printed instructions and historical illustrations given to counsel on this important argument.

Though very decided in his political views, he meddled but little with many of the numerous legal contests so often springing out of political offences. In the year 1821 or 1822, however, under Lord Castlereagh's ministry, feeling strongly the danger to public liberty of a private society for instituting political prosecutions, he came forward to conduct the defence of several parties indicted by the constitutional association; and, in conjunction with a most acute and learned member of the bar, now filling a judicial situation, so baffled the prosecutors by objections to juries summoned by a sheriff who was a member of the association, and by other legal obstacles, as to prevent, we believe, the conviction of any of the individuals he defended.

The origin of the illness which brought this remarkable man to an early grave, at the age of forty-six, is not known. He considered himself, we believe, as having no serious complaint

until the year 1832; and after a violent attack he had in that year, he so far recovered as to be, or at least to appear in the enjoyment, for a considerable time, of tolerable health. Though symptoms of weakness had shewn themselves earlier, they were not thought of much consequence by medical men. The complaint however, of which he died, had taken root in 1832, if not earlier; and, with occasional intervals, he was from that time suffering until his death. The agonies he endured were most acute; and when the disease was not alumbering, of frequent recurrence—and certainly never was pain more stoically borne. The chief part of his writings above enumerated were composed during the last years of his life, and in his sick room. The "Book of Rights" was one of these. He rarely spoke of his sufferings, but in the preface to that book he alludes to them, and to the diversion of thoughts derived from his occupation in the work. For two or three of his last years he was unable, from his complaint, to pass a whole night in sleep, and he made a constant practice of getting up at one or two in the morning for an hour or two, and of lighting his candle, and attending to his studies.

At the end of June he had a most serious and violent attack, which lasted some days. After this attack he felt clear that his life would not be much prolonged; and on recovering a little, he drew instructions for a fuller will, and set about making more complete arrangements than he had before made. He wrote to one of his partners to get the will completed without loss of time, "as he was then more fit for such matters than he should be again;" and he spent his time between intervals of pain, in going over, and tying up, and endorsing and setting down full particulars about all his papers and affairs, and in writing a variety of letters, to be opened after his death, to different persons, on matters he wished attended to, or explaining views he thought important to be understood. The coolness and composure with which all this was done was marvellous. He settled the draft of a long will as if it had been a client's—had parts re-copied and altered after it was ingrossed; and, after it was signed, wrote two codicils with his own hand, to supply little matters he thought it best to leave expressed. His last codicil was a bequest of the printed copy and of the manuscript of his translation of the New Testament to his wife. When this was finished, he meddled no further with business, nor with those more laborious pursuits which to him were always as part of the business to be done. But, preparation having been the work of his whole previous life, he waited, in quiet expectation, for the most mysterious passage in the soul's history, spending his time in cheerful conversation with his family and near relations, all of whom he had requested thenceforward to stay about him. An operation was thought of and nearly determined upon; and though he had a strong secret conviction that it was impossible he should survive it, nothing could be

more cheerful than his readiness to undergo it. When it was at last abandoned at Sir Astley Cooper's instance, he then first stated he was quite sure they had decided rightly.

For the last three weeks he was slowly sinking, and upon the morning of the 19th of August ceased to breathe—so tranquilly that the precise moment of his death is not known, though it was watched for by his brother and attendants. He was buried at the New Cemetery, Highgate. Though he left no kind of direction, or expressed the slightest wish on the subject, the ceremony was arranged with as much of modesty and quietness as possible, in accordance with what most certainly would have been his desire; for, if he had an unpopular point of character, it was his reserve, and this reserve arose from a disgust and loathing, almost morbid, of any thing approaching to show or ostentation. Wide as his acquaintance, and even influence was, it is to this point in his character we attribute his not being much more publicly and extensively known.

His great generosity should be mentioned. Though careful in his habits, and fully aware of the value of money, yet in matters of charity which he approved, particularly those connected with education, he was most liberal. The writer has been himself a party to many applications to him for aid of this kind, and never remembers his not giving at least double what was asked; and many requests for a guinea, he remembers met by gifts of five. Yet so unostentatious were these, that he is very sure Mr. Taylor's immediate family were never aware of them.

His family and numerous relations, many of them themselves distinguished for literature or science, were greatly attached to him, and proud of their connection with him; and this attachment was if possible increased by important professional exertions (not necessary to be further alluded to) which he made for one of them during the last years of his life.

Mr. Taylor married in the year 1823, Ann, daughter of J. Christie, Esq., of Hackney. He has left a widow and an only daughter surviving. His father also is still living, though at a very advanced age. He had realised a handsome, though not excessive fortune. His executors are one of his brothers, a pleader of eminence of the Inner Temple, (formerly a pupil of his) and two of his partners.

He, early in life, entered himself of the Inner Temple, and kept his terms. It was we believe, a few years ago, his intention, had his health been tolerably good, but not altogether re-established, to have been called to the bar by way of retiring from practice; but he continued till his death a member of that class of the profession which he had first entered, and for the honour, reputation, and interests of which he felt always the deepest regard.

We must now close this memoir. Though undertaken at the request of the conductor of this Journal, and of a few leading members of the profession, old friends of Mr. Taylor, desirous of having some record of his life, the writer alone is responsible for its sentiments

and its faults. To Mr. Taylor's memory, it is offered as a last testimony from one attached to him for twenty years, by respect, friendship, and a long series of important obligations,—and, to his branch of the profession, as sketching, though imperfectly, the character of one of its members, whose connection was to it never any thing but a matter of credit and advantage, and from whose name it can gain nothing but honor.

## SUPERIOR COURTS.

### Lord Chancellor's Court.

#### INJUNCTION.—SUIT IN A FOREIGN COURT.—JURISDICTION.

*A suit was instituted in a foreign court to adjudicate on real property within its jurisdiction. Another suit was instituted in this country, to administer a will, and carry into effect the trusts of a settlement of the real property in the foreign country; all the parties to both suits being within the jurisdiction here. An injunction was granted to restrain the parties from proceeding in the foreign court, without denying its jurisdiction to decide the subject in dispute there, on the ground that, as this Court had undoubted jurisdiction over part of the subject-matter of the suit and over the parties, all being within the jurisdiction, and it was probable it might be able to adjudicate on the whole subject, it was not expedient to allow two suits to proceed to decisions, which, if carried out to the ultimate resort, might come in conflict.*

Hugh Mills Bunbury, lately deceased, an Englishman, went to the island of St. Vincent, an English colony subject to English law, in the year 1788, and he there married Miss Cox, an English lady. By a marriage settlement, executed in contemplation of the marriage in 1791, certain plantations with the slaves thereon in that island were conveyed to trustees, in trust for Mr. Bunbury for life, remainder to his said intended wife for life, remainder to the children of the marriage, to be equally divided between them at twenty-one, or marriage. In the year 1796, Mr. Bunbury was appointed ordinance storekeeper in Demerara, a Dutch colony, then recently captured by the English forces, and he went there from St. Vincent, taking with him his wife and family, but still retaining in his own hands the plantations and slaves in St. Vincent. Soon after his arrival in Demerara, he obtained a tract of land which he brought into cultivation, and called "the Devonshire and Devonshire Castle Plantations." Mrs. Bunbury died there in the year 1800, leaving two children of the marriage, Hugh Mills Bunbury the younger, and Lydia Jane, now the wife of the Count De Vigny, a French nobleman. Mr. Bunbury, the father, returned to England with his said children in 1812, but went occasionally afterwards to visit

the property in St. Vincent and Demerara, which he continued to manage and to deal with as his own exclusively up to the time of his death; and in the year 1822, on his marriage with Miss Lillie in this country, he executed articles of agreement, whereby he covenanted to vest the Demerara plantations in trustees, subject to certain existing mortgages, in trust to pay his said second wife 500*l.* a-year for pin-money, and subject thereto in trust for himself for life, and to raise a sum of 30,000*l.*, and to secure a jointure of 2000*l.* a-year to his said wife, with remainder to the issue of that marriage, &c. He reserved to himself a power of appointment over the 30,000*l.*, which in default of appointment, was limited to the children of both his marriages in equal shares; with power to him, however, to extinguish that charge altogether, which power he afterwards exercised. In 1832, there being then five children of the second marriage, Mr. Bunbury being minded that the Dutch law, which prevailed in Demerara, would interfere with his absolute disposition of the property there, made his will, and thereby devised to his children by his second wife one moiety of his estates in Demerara, subject to his wife's jointure, and conceiving that the other moiety would go by that law in equal shares to all his children, he confined the seventh part of that moiety to each of his seven children; and directed that the slaves &c. comprised in the settlement on his first marriage should be also equally divided among the seven. He afterwards made several codicils to his will, by one of which, dated in October, 1833, he made provision for a sixth child, then born of the second marriage; and after reciting that he had become entitled to certain compensation money for his emancipated slaves, he gave the same to his wife, in trust as to 2000*l.* part thereof, for his two children of his first marriage in equal shares, with remainder to their children respectively; with remainder to the children of his second marriage. And he directed and declared that if the children of the first marriage should give any trouble by litigation or otherwise to his wife, whom he appointed his executrix, in the disposition of his estate and effects, the bequests made to them should be void. The testator died in 1838, leaving the two children of the first marriage, his second wife, and eight children by her, surviving him. Soon after the testator's death, Hugh Mills Bunbury and the Countess de Vigny, the two children of the first marriage, commenced a suit in Demerara, and claimed to be entitled in right of their mother under the law of that colony, to one moiety of the plantations there, and to a moiety of all the profits of the plantations since her death; and to a moiety of the slave compensation money; and to children's parts of the other moiety of the plantations, and of the personal estate of the testator, according to the law of Demerara. The children of the second marriage filed their bill in this court against the executrix and the trustees of the settlement executed on her marriage, and against Hugh Mills Bunbury, all of whom

are residing in this country, and also against the Count and Countess de Vigny, who are residing in France. The bill prayed that the trusts of the settlement of 1822, and the said will, might be established and carried into execution: or that the trusts of the will and codicils might be carried into execution without reference to the settlement, if they were inconsistent therewith; and the bill prayed for an account of the proceeds and profits of the Demerara plantations, and that the defendants H. M. Bunbury, and the Count and Countess de Vigny might be restrained by injunction from proceeding with their suit in Demerara, and that a manager and consignee of the estates there might be appointed, &c. All the defendants appeared and put in their answers to the bill. A motion was made on behalf of the plaintiffs in May last at the Rolls, for an injunction to restrain the defendants H. M. Bunbury and the Countess de Vigny and her husband, from prosecuting their suit in Demerara, and also for a manager and consignee of the estates; and upon the plaintiffs and the defendant their mother undertaking to confess judgment, or consent to any order this court might thereafter make respecting the proceedings in Demerara, the Master of the Rolls granted the application on both points, pronouncing an elaborate judgment on the various questions raised in the arguments before him.

The defendants H. M. Bunbury, and the Count and Countess de Vigny, now appealed from his lordship's order.

The *Solicitor General*, Mr. Stuart, and Mr. G. Turner were for the appellants; Mr. Wigram, Mr. Burge, and Mr. Loftus Wigram, were for the respondents; viz. the plaintiffs in the cause, and the defendant Mrs. Bunbury, the executrix; Mr. Spence was for the trustees.

The points of the arguments, which were of great length, may be collected from the following judgment, which also states the complicated questions in the cause. Among the cases and authorities cited by the counsel on both sides were the following, which we set down in chronological order, and not in the order they were cited:—*White v. Hall*,<sup>a</sup> *Kennedy v. Earl of Casselis*,<sup>b</sup> *Attorney General v. Stewart*,<sup>c</sup> *Dalrymple v. Dalrymple*,<sup>d</sup> *Harrison v. Gurney*,<sup>e</sup> *Bushby v. Munday*,<sup>f</sup> *Elliott v. Lord Minto*,<sup>g</sup> *Beckford v. Kemble*,<sup>h</sup> *Ferquherson v. Seton*,<sup>i</sup> *Martin v. Martin*,<sup>k</sup> *Lord Portarlington v. Soulby*,<sup>l</sup> Mr. Justice Storey, on the Conflict of Laws, pp. 161, 301, 361 and 463; Mr. Burge's book on Foreign Law, *passim*, and a late case in this court, not reported, relating to the estates of the Duke of Broute (Lord Nelson) in Italy.

The *Lord Chancellor*—This is a case of great difficulty and great novelty, and I am not sur-

prised at the doubt which the Master of the Rolls is said to have entertained as to the order he should pronounce; but I am satisfied that, as the case now stands, the order he did pronounce was the right order. There is no doubt of the jurisdiction of this Court, acting upon the person here, to prevent him from proceeding in a foreign court. It is not disputed that it is constantly done, not interfering with the foreign court, any more than this court interferes with the Court of Queen's Bench; but acting upon the persons, and prohibiting them from doing that, which under the circumstances the court thinks they ought not to do. It is equally certain that the law of the country where the land is situate, is the law which is to determine the right of the parties claiming the succession to the land; but that is not the question in discussion between these parties. The question here is of a totally different character; the short state of the case being, that the father of these two families having married his first wife, and having children by her, obtained real property in Demerara; having made a settlement on that wife, the first question which arises is, what is the effect of that settlement? It being admitted that by the law of Demerara, the Dutch law, though the law of community of goods prevails, the parties may by contract and settlement preclude themselves from being bound by that law, and therefore exempt the property from a succession according to that law. The first wife having died leaving children, the father after a certain time married again and had a second family, and he took on himself to deal with the property, which he had in community with his first wife, as his own, making it the subject of settlement on the second wife and family, and the subject of disposition by his will; and the object of this bill is to have the property administered according to the disposition made by the father, either under the settlement on the second marriage, or under the will. The children of the first marriage meet that claim by saying, "The author of this instrument had no right to deal with a portion, at least, of that property, because that property was subject to the law of Holland, and by the law of Holland our mother was entitled, and we, who are her children, claiming in her right, have a right to the division of the property according to the principles applicable to the law of community; and therefore, though the father exercised or attempted to exercise a power over the property, he had no right so to do, and we therefore have a right to succeed in obtaining possession, and to have the enjoyment of that portion of the property, which, according to the law of community, belonged to us." The first question raised is, is that to be decided according to the law of Holland, or have the parties by contract precluded themselves from saying that that property is affected by that law? It comes at once to the case, on which no one entertains any doubt, that if parties contract for land in Demerara, this Court will exercise jurisdiction and decide the rights of the parties, not according to what the law of Demerara

<sup>a</sup> 12 Ves. 321.

<sup>c</sup> 2 Meriv. 143.

<sup>e</sup> 2 Jac. & W. 563

<sup>g</sup> 6 Madd. 16.

<sup>i</sup> 5 Russ. 45.

<sup>b</sup> Swanst. 323.

<sup>d</sup> 2 Hagg. Rep. 81.

<sup>f</sup> 5 Madd. 297.

<sup>h</sup> 1 S. & S. 7.

<sup>k</sup> 2 Russ. & Myl. 537.

<sup>l</sup> 3 Myl. & K. 104.

would be independently of the contract, but what the law is, which the parties have made for themselves, by the contract they have entered into between themselves. It comes to this, that if this was a case of partnership, to be regulated by contract, the law where the land was situate would be a matter quite immaterial, except as it might create great difficulty in carrying the contract of the parties into effect: but still the rights of the parties as far as they could be carried into effect, would be carried into effect according to that which they themselves have arranged as between themselves. The rights of the parties, therefore, depend not on the law of the country. On that I apprehend there could be no doubt if the question of the settlement was out of dispute, at any rate, it cannot arise till that preliminary question is disposed of. Have the parties, or have they not, made a law for themselves, is the first question. Certainly this Court is as competent, wherever the parties are situate, to decide on a question of that sort as a Demerara court can be; but there is another circumstance in this case. It is admitted as to another question, that this Court must come to an adjudication as to personal property, because as far as the personal property is concerned, it is not in dispute: this Court must administer it, and therefore, in order to enable the Court to administer it, the Court must adjudicate on that very question, which will decide the point as to whether the law of community is to prevail or not. So that there is a cause pending in this Court, and which this Court must adjudicate on the question of foreign law; that is, adjudicate on the question of the settlement; on the adjudication of which the question of foreign law will depend, to the extent, at least, of part of the property which is to be administered. Nothing can be more inconvenient when this Court is in a situation to make it absolutely necessary to adjudicate on a principle, than not to be able to adjudicate on the whole principle. But suppose the Court proceeds so far, and finds the law of community does apply to this case, and that the parties have not made a law for themselves, and taken this property out of the principles of the law of community, then the Court must, as far as the personalty is concerned at least, make those inquiries, and direct those accounts to be taken which are necessary in order to ascertain what the estate in community was. I think it would be a great inconvenience, almost an impossibility, and contrary to all the principles where accounts and inquiries affect a mass of property, to confine the adjudication to a particular description of property, and in which the Court cannot do justice without having the whole under its jurisdiction. For these reasons, though there is a good deal of novelty in the question, and the rights of the parties, I think the order of the Master of the Rolls, as pronounced, is not opposed by any principle of law, or any principle of equity: it is not interfering with any foreign jurisdiction; it is only taking to itself the adjudication of the

whole subject-matter, part of which is admitted to be necessarily within its jurisdiction. It is true, if the permitting of these proceedings to go on in Demerara would enable this Court more satisfactorily to dispose of the question between the parties, it would be my duty so to do, and there might be good reason for doing that which was done in Lord Alinto's case, viz. permitting the proceedings to go on to an adjudication in the Court of Session, in order to ascertain what the Scotch law was. In one view of this case there is no necessity for that course. If it is found that the settlement does preclude the law of community, there is no necessity for inquiring what the law of Holland would be as to the law of community; but I do not find the proceedings in Demerara are at all calculated to bind the rights of all these parties. As I understand, it is a proceeding by which the children of the first marriage are claiming possession of land, not against the children of the second marriage, with whom this contest is, but against those who are, under the instrument executed by the father, in the possession of that estate. I have no means of knowing, nor can I trust the interest of the children of the second marriage to such defence as those parties might think proper to make; and whatever, therefore, is the adjudication of the Court of Demerara between those parties, it is not possible to preclude the question which the children of the second marriage may think proper to raise against the children of the first marriage. I think it would be exceedingly inconvenient to adopt a course which might lead to a different adjudication on the same question between tribunals which have no controul one over the other. So that if this Court were to proceed and adjudicate on the question, which will be the primary question to be decided, and decide that this settlement precludes the law of community from being applied, and so distribute the property which it has under its jurisdiction according to the instrument executed by the father, and the Court of Demerara should adjudicate precisely the reverse with regard to the land, and the one decision goes to the House of Lords, and the other to the Privy Council, adverse decisions on appeal may take place upon the very same question, one applicable to one part of the property, and the other to the other. Sir J. Leach, in one of the cases referred to, saw the inconvenience of that, and said, "I will not permit these parties to go on in the Court of Session; and one reason is, because as the matter must ultimately be disposed of here, and as this Court has possession of the subject-matter, by having the party here against whom the allegation is made, he ought not to be permitted to use the instrument which he has obtained. If I permit the party to proceed against the land in Scotland, there may be a decision by the Court of Session one way, and by this Court another way, which will be extremely inconvenient." In this case, undoubtedly, the apprehension of that inconvenience ought not to prevail, provided the party was



in a situation in which he had a right to say, "The law of Demerara is to prevail, and I have a right to assert my title according to the law of Demerara." But when I find the case does not turn on the Dutch law, in the first instance at least, though it may ultimately; but it turns on a preliminary question which this Court is not only as competent as the Court of Demerara to decide upon, but according to the position of the parties, much more competent, inasmuch as it has all the parties here, I think, as a matter of discretion, it would be exceedingly inconvenient and improper to allow the proceedings to go on, involving the same question with the chance of their coming to opposite conclusions. For these reasons, in the present state of the case, with this preliminary question existing between these parties, which this Court is perfectly competent to decide; and which, if decided one way, will prevent the necessity of any further litigation any where, I am of opinion the order of the Master of the Rolls is the right order to pronounce.<sup>m</sup>

That order was therefore affirmed, the costs to be costs in the cause.

*Bunbury v. Bunbury*.—Sittings at Lincoln's Inn, June 19th and 20th, 1839.

### Queen's Bench Practice Court.

#### INTERPLEADER ACT.—INFANT CLAIMANT.

*The Court can relieve the sheriff under the Interpleader Act, where the claimant is an infant.*

This was a rule obtained on behalf of the sheriff under the Interpleader Act.

*Petersdorff* shewed cause, and contended that the claimant, being an infant, the Court had no power to direct an issue, for she could not be compelled to obey any order which might be made.

*Humfrey*, for the sheriff, submitted that the 6th section of the act was sufficiently comprehensive to include such a case as the present.

*F. V. Lee* for the execution creditor.

*Williams, J.*—I do not see that there is any restriction in the act which will prevent me from directing an issue. If there is any difficulty, it arises between the litigant parties, but the sheriff at all events is entitled to relief. The terms to be imposed between the other parties is another question.

Issue ordered.—*Claridge v. Collins*, T. T. 1839. Q. B. P. C.

<sup>m</sup> In answer to some difficulty expressed by his Lordship of carrying into effect the order of the Master of the Rolls, which he had just affirmed, inasmuch as the children of the second marriage, plaintiffs in this suit, were not parties to the suit on demurrer,

Mr. *Burge* undertook for them that they should be made parties to the cause in Demerara *pro forma*, and should of course submit to any order this Court would make on them.

#### MISCONDUCT OF LANDLORD.—RECOVERY OF RENT.

*Where a landlord of furnished apartments by his own misconduct justifies his tenant in abruptly quitting his house, the tenancy being for a limited period, he cannot recover rent for the whole term, but for the time only during which there was an actual occupation of the apartment.*

*Humfrey* had obtained a rule in this action calling upon the defendant to shew cause why there should not be a new trial. It was an action for the use and occupation of a part of a furnished house, and the particulars of demand stated a special contract to pay a sum of 40*l.* for six months from the 25th of March, and credit was given for 14*l.* paid in advance and on account of the rent. The cause was tried by Mr. Serjeant *Arabin*, when it was admitted by the plaintiff's counsel that he could not prove the special contract, and evidence was then given as on a *quantum meruit*, and it was proved that the defendant occupied the lodgings from the 12th of May for seven weeks, when in consequence of some disagreement between the plaintiff and defendant, the former refusing to allow the latter to light a fire to cook some fish on a Sunday, the defendant said that he should quit the apartments. The plaintiff said that she did not care, for that she could get a better rent for them, and the defendant, having stopped one week longer, went away. Evidence was given that the apartments were worth 2*l.* per week, and the jury gave 1*l.* 19*s.* 4*d.*, which, with 14*l.* 8*d.* already paid, made up the amount due at that rate.

*Gurney and Tyndale* now shewed cause on behalf of the plaintiff, and contended that the verdict should not be disturbed. It was proved that the lodgings were worth 2*l.* a-week, and the conduct of the plaintiff in putting an end to the tenancy did not affect the question. The plaintiff was not so bound by the particulars of demand that she was precluded from proving her claim on a *quantum meruit*, although she could not prove the special contract.

*Humfrey and James*, for the defendant, urged that the defendant by the plaintiff's misconduct was prevented from having the full use of the apartments, and that the plaintiff was not entitled to recover anything beyond what had been already paid to her. She was, besides, bound by her particulars of demand, and must prove the contract set up in them. *Holland v. Hopkins*, 2 B. & P. 243; *Brecon v. Smith*, 1 A. & Ell. 488. A case of *Duncombe v. Daniel*, not yet reported, was also referred to.

*Cur. adv. vult.*

*Coleridge, J.*—In this case I think there should be no rule. It cannot be doubted that the jury have taken a view of the case which, upon the evidence, may be right. An occupation of eight weeks was proved. There was evidence which would warrant them in estimating, that, at 40*s.* a-week, 14*l.* 8*d.* had been paid, and they had given a verdict for 1*l.* 19*s.* 4*d.* But it is said, that the plaintiff's

counsel opened that there had been a special contract for a taking for six months absolutely at a given sum, and that the plaintiff's particulars shewed that; that it was intended to be proved that she, by her own misconduct, determined the tenancy, and, therefore, that she was entitled to nothing. Assuming the premises to be correct, which I do not concede, I am not prepared to assent to the conclusion. If a landlord by his misconduct justifies the tenant in an abrupt departure during a tenancy limited to a specific period, and to be compensated by a fixed sum, he can neither recover the whole rent upon the original contract, nor insist, as in the case of an ordinary tenancy, upon the want of notice; but, if he has been paid a sum for the actual occupation, I do not see how the tenant can recover that back; and, if after the misconduct the tenant remain for any time, I as little understand how he can refuse to pay what a jury may think such occupation to be worth. And that is the present case. At the end of seven weeks, the misconduct on which the defendant relies occurs, but he has previously paid what is equivalent to the occupation up to that time. He remains in the house a week longer, and the jury assess upon him a sum which they deem proper for that week's occupation. In this way of viewing the case, it is hardly necessary to consider the binding effect attributed to the opening and the plaintiff's particulars; but, I may say, that although I entirely agree with the observation said to have been made by Lord Denman in *Duncombe v. Daniel*, with reference to the facts before him, and think his remark both true and important. I do not agree that the plaintiff is bound to stand upon an expressed special contract, and cannot resort to an implied one, because his counsel has stated such, and at the same time said he could not prove it. And with regard to the particulars, they would be made an instrument of great injustice if they were held to have so narrow and conclusive an operation as the defendant's counsel contended for. The rule will therefore be discharged.

Rule discharged.—*Kirkman v. Jervis*, T. T. 1839. Q. B. P. C.

### Exchequer of Pleas.

#### BEST ON BOND.—VARIANCE.—PLEA.

*The plaintiff declared in debt on a bond against the defendant as W. F. B., sued as W. B.; the defendant pleaded non est factum. It was proved at the trial of the cause that the bond was executed by the defendant as W. B., by which name he was well known: Held, that there was no variance, and that the bond was not void, and that the objection was not available under the plea of non est factum.*

*Crowder and Jardine* shewed cause against a rule obtained by *Erle*, for setting aside the verdict found in this cause, and for a nonsuit, pursuant to leave reserved. It was an action

of debt on bond, and the declaration commenced as follows:—"Thomas Williams, the plaintiff in this suit, complains of William Francis Bryant, the elder, sued as William Bryant, the elder, the defendant in this suit, for that whereas the defendant heretofore, to wit &c., by a certain writing obligatory, sealed with his seal, acknowledged himself to be held and firmly bound to the plaintiff, &c." The defendant pleaded *non est factum*. At the trial of the cause, it appeared that the bond was executed by the defendant in the name of William Bryant, and that he was well known by that name, and it was objected on the part of the defendant that there was a fatal variance. A verdict was, however, found for the defendant, and the present motion in consequence made, on the authority of the cases of *Field v. Winlow*, Cro. Eliz. 897; *Clark v. Istead*, Lutw. 894; and *Gould v. Barnes*, 3 Taunt. 504.

It was contended, that the only point in issue was, whether the defendant executed the bond, and by his appearance he admitted that he was the person intended to be named. Any intendment adopted would be in favor of the declaration, and therefore as the name of William was admitted to be the christian name of the defendant, it might be that Francis was adopted by him after the execution of the bond. It was admitted that in all deeds which operated without livery, the name of the party must appear, in order that there might be a *designatis persona*; but from the authorities it appeared that the christian name was the material part of the description, for a man might have several surnames, but could have one christian name only. Co. Lit. 3, a. This distinction was adverted to in Perkins' Profitable Book, tit Grant, p. 38; and the same rule laid down. So also in Roll. Abr. tit. Faits, 3, and in Com. Dig. tit. Fait, E. 3. In Bac. Abr. tit. Grants, it was said, "It seems the better opinion of the books that a mistake of the christian name will vitiate the grant, as where the grant is made without any christian name at all, or where a wrong name is made use of, as Edmund for Edward; neither can the party be declared against by his right name, with an averment that he made the deed of his wrong name, for that would be to set up an averment contrary to the deed, and contrary to that sanction allowed by law to every solemn contract; and therefore if he be impleaded by the name in the deed, he may plead that he is another person, and that it is not his deed, but a mistake in the surname does not vitiate the grant, because there is no repugnancy that a person should have two different surnames, so that he may be impleaded by the name in the deed, and his real name brought in by an *alias*, and then he cannot deny the name in the deed because he is estopped to say anything contrary to his own deed." The same rule of law was recognized by Gilbert C. B. in his treatise on the Common Pleas, p. 176, in speaking of the jury process: and the same distinction between a christian and surname was drawn in the Year Books; 3 Hen. 6, 25 pl. 6; 33 Hen. 6, 196; Fitzp. Abr. Graunt 23; *Panton v. Chowles*, Moor 897; *Diaply v. Spratt*, Cro.

Eliz. 57; *Humble v. Glover*, lb. 328. The reason given for this distinction was stated in *Button v. Wightman*, Poph. 57, to be that "anciently men took most commonly their surnames from their places of habitation, especially men of estate; and artisans often took their names from their arts." The cases on whose authority the rule had been obtained all came within the rule laid down in *Gould v. Barner*. The defendant in that case, Joseph Barnes, entered into a bond by names of Thomas Barnes, and it was held that a declaration against him by his right name, stating that he by his wrong name executed the bond was bad; but if the defendant had been sued by the name in the bond, he could not have pleaded the other in abatement, for it might have been replied; that he was as well known by the one name as the other, and the bond would have been evidence of that fact. The cases of *Clarke v. Istead*, *Hyckman v. Shotbolt*, Dyer 279, b. *Field v. Winslow*, and *Evans v. King*, Willes 554, were all decided on the same principle. The objection raised however was not available under the plea of *non est factum*; for since the rule of H. T. 4 W. 4, s. 11, that plea denied only the execution of the instrument in point of fact.

*Erle and Bull, contrà*.—The plaintiff should have declared against the defendant by the name in which he executed the bond; for the rule was clearly established that if a party executed a deed by a name, he was estopped from denying that it was his true name. *Watkins v. Oliver*, Cro. Jac. 558; *Maly v. Sheppard*, Cro. Jac. 640; *Linch v. Hook*, 6 Mod. 255; *Reeves v. Sulter*, 7 B. & C. 486. The suggestion that Francis was a surname should have been made at the trial, as it was entirely a question for the jury, and evidence might have been given which would have satisfactorily rebutted such a supposition. With regard to the plea, it was urged that the new rules did not require the defence to be specially pleaded, and that the plea here on record put in issue the execution of the bond by the person charged in the declaration.

*Cur. adv. vult.*

At the Sittings after Term, Parke, B., delivered the judgment of the Court. The Court are of opinion that this rule should be discharged. Several authorities were cited for the defendant, from which it appears to be a settled point that if a declaration against a defendant, who has but one christian name, as for instance, Joseph, states that he executed a bond by another name, suppose that of Thomas, and there be no averment to explain the difference, as that he is known by the latter name, the declaration will be bad either on demurrer or in arrest of judgment after issue joined on the plea of *non est factum*. The reason is, that in all bonds, deeds, or other instruments, the effect of which rests on the instrument itself and does not derive its efficacy from livery or any other matter *in pais*, there must on the face of the instrument be a sufficient designation *personarum*, which, in the case of ordinary persons, is by name. Many

authorities were cited by Mr. Jardine, several of which are to be found in Sheppard's Touchstone 233-4, one of which in particular, that of *Evans v. King*, shews that a man cannot have two different christian names, nor indeed can he properly speaking; but on the other hand, it is equally certain that at the present day a person may sue or be sued by any name acquired by usage, adoption, or otherwise; for although there is this case in Vin. Abr. Misnomer, c. 12, 7, 10, 3. 'Defendant pleaded that he was baptized by the name of Micha, not Michael; plaintiff replies that he is known as well by the name of Michael as Micha. Demurrer, because he ought to have traversed that he was baptized, and not that he was known by one name and not the other, for a man cannot have two christian names, and judgment was given for the defendant,' yet if a person be known by any improper name, by that name he may be sued. We do not rest only upon the modern practice, for this doctrine is in accordance with the most ancient authorities. Bracton, 138 b.; Com. Dig. Fait. E. 3; Roll. Abr. vol. 2, p. 43, tit. "Graunts," B.; 46 Edw. 3, fol. 22. If a party may be sued by an improper name, why may not that name be considered a sufficient designation in a bond? It does not follow that the question would have been the same in *Gould v. Barnes*, if it had been averred on the face of the declaration that the party was known as well by one name as the other. There is no authority for saying so. Still less does it follow that where a man has two names, and is declared against as here, that under the plea of *non est factum*, where the difference of name does not appear on the record, and evidence is given by his being known by that name, no case has been cited, nor do we know of any to establish that the instrument will be void. In *Hyckman v. Shotbolt*, the name of the obligor was written in the bond, John, instead of William, by mistake, but it was signed with the name of William. In the absence of authorities, and relying on the law of misnomer in actions as it is now settled, we think that the bond is not void, whether Francis be the first or christian name, or a family name. The Court wish to add, that even if the objection were valid, it could not be available under the plea of *non est factum*.

Rule discharged.—*Williams v. W. F. Bryant*, sued as *W. Bryant*, T. T. 1839. Excheq.

## THE EDITOR'S LETTER BOX.

It appears clear that A. B. B., whose articles will not expire till February, cannot be examined in Hilary Term.

The letter of "An old Solicitor," on Legal Examination Distinctions, is under consideration.

The corrections for the Legal Almanac have been received.

# The Legal Observer.

MONTHLY RECORD FOR SEPTEMBER, 1839.

—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

## PRIVATE BUSINESS OF THE HOUSE OF COMMONS.

WE recently stated the Second Report from the Select Committee on the Private Business of the House of Commons, (see p. 331, *ante*;) and now proceed to state the substance of Mr. Tyrrell's views on this subject, as comprised in his letter to the Committee, and his subsequent evidence. In consequence of the vast number of private bills brought before Parliament every session, and which are conducted by the members of the profession, the proposed alterations are of great importance to the majority of our readers.

The Select Committee having recommended some new forms of bills to be prepared, these bills, with the reports of Mr. Booth and Mr. Symonds, in reference to the plan on which they had been framed, were laid before Mr. Tyrrell for his opinion, and we extract the following from his letter.

“The bills which have been prepared appear to me to contain, but very much simplified and improved in language and arrangement, the sets of provisions usually inserted in the different classes of private acts mentioned in Mr. Booth's report. Such provisions, however, are in many respects inadequate for the purposes for which they are intended, and occasion great difficulties in carrying into execution the acts of parliament in which they are contained. Many questions which have arisen upon them have become subjects of litigation, and much more numerous classes of cases in which defects have been discovered are known to counsel, who have been resorted to for advice respecting the proper construction of

doubtful and inconsistent clauses, and the best means of obviating the difficulties of giving effect to the powers intended to be granted by them. Private acts are usually prepared in great haste, and are seldom framed by competent persons. The parties by whom they are obtained are anxious to get their undertaking established by Parliament, and care but little about the forms in which the necessary powers are given to them. Often they are not aware of the importance of having their bill well drawn, and if they were, they would probably object to incur the delay and expense necessary for that purpose. The progress of the bill is facilitated by copying the clauses, however loose and imperfect, of former acts; because such acts can be produced as precedents in committees to prove that the same privileges have been granted to other parties; and the Lord who is chairman of the committees of the House of Lords very properly discourages a variety of different forms in bills of the same class. From these causes, most of the sets of clauses are copied from those contained in the first act for a similar purpose, without any other improvement than the addition of a few words or clauses to correct some notorious defects. At present, when difficulties arise in carrying the powers of an act into execution, the parties who obtained it have no one to blame; and they are usually willing to adopt any circuitous means of getting rid of the difficulty, or to risk the danger of leaving their proceedings open to objection, rather than incur the expense of another act to amend their powers.

“If the bills which have been prepared were adopted in their present form, it would be obviously a great improvement upon the present mode of passing private acts; but, in consequence of the imperfections of the clauses, they would not be satisfactory to the public, and would bring discredit on the persons employed in framing them, and it would afterwards be necessary to correct the errors and supply the defects, either as those in the General Inclosure Bill have in some respects been

corrected and supplied, by additional clauses in the special acts, or by new acts to repeal and amend the general acts.

I am therefore desirous to decline the reference with which I have been honoured, unless the measures are to be framed in the most complete and effectual manner; and, to accomplish this object, it appears to me that many of the provisions proposed to be inserted in the general bills ought to be entirely re-modelled, and that much more is required than the revision and correction of the bills which are contemplated by the committee.

"I should also feel incompetent to perform so important a work without having the occasional assistance of other persons, particularly that of a member of the common law bar, practically acquainted with the difficulties which have occurred on trials before juries, and other common law proceedings under private acts; and also that of one or more Scotch lawyers, with reference to the provisions relating to Scotland.

"It also appears to me that the proposed measures cannot be effected in a complete manner, without taking into consideration all the different classes of private bills; for otherwise some of the general acts would not be applicable to private acts to which they ought to extend; for instance, the Lands Acquisition Act contains two sets of provisions, the first to authorise the purchase of land which is in settlement or subject to trusts, or of which, from some other cause, a conveyance cannot be obtained, by empowering tenants for life or other persons having limited interests, to sell and convey it, and, at the same time to protect the interests of all other parties, by requiring that the purchase-money shall be invested under the direction of the Court of Exchequer in the purchase of another estate to be settled in a similar manner; and the second, to enable the parties to whom the execution of the act is intrusted to take the land when the owner, whether absolute or capable of selling under the act, refuses to sell or is unknown. Both sets of provisions form part of every railway, canal, and other act requiring the use of specified lands; but the first set only, which consists of more clauses than the second, is usually contained in acts for establishing gas and water companies, and in acts for gaols, town-halls and market-places, and in several other acts. The benefit of the general measure should be extended to all such acts, and, for that purpose, the two sets might be contained in separate acts, or it might be declared that the second set of powers might be referred to in the special act by the words "compulsory powers," and then in every special act, to which only the first set would be applicable, it would be sufficient to declare that the Lands Acquisition Act, except the compulsory powers, should form part of such act.

"In answer to your request, that I should state the time which would probably be required to frame a complete set of general bills, it is I think, impossible that such a work could be performed in less than six months. Those

who are unaccustomed to the task are unable to estimate the amount of labour and patience required to enable even the most experienced conveyancers to prepare new clauses in a satisfactory manner. On account of the imperfection of language, it is very difficult to frame a clause upon which no question of construction can be raised, and it is impossible for those who have had the greatest practice to foresee every case to which it may relate. It very rarely happens that a clause is drawn in the first instance in a perfect manner, and it is necessary to consider whether it includes every possible circumstance which ought to be provided for, and to take great care that it may not affect some case to which it is not intended to apply. It is frequently necessary to re-draw the clause entirely, and sometimes it is re-drawn several times. I take the liberty of attempting to correct an impression which, from the evidence given before the Committee on Private Bills, appears to be entertained, that any lawyer accustomed to consider the legal construction of words is fully competent to frame an Act of Parliament. I venture to assert that those who have not been accustomed to the task do not feel the difficulty of it, do not bestow upon it sufficient time and consideration, and, for want of practice, do not foresee many questions which are likely to arise. It is well known that many Judges who have been most distinguished for deciding questions of construction have failed when they have attempted any legal composition. The wills which several of them have drawn for themselves have been the subject of litigation. Lord Eldon, in drawing the will of the Duchess of Brunswick, left one of the principal provisions of it ineffectual in consequence of an inaccurate expression, and he took care to have his own will drawn by a conveyancer. Lord Tenterden took considerable pains in framing three statutes, 9 Geo. 4, c. 14, 2 & 3 Will. 4, c. 100, and 8 & 4 Will. 4, c. 71, and numerous questions have arisen upon all of them, and occasioned considerable litigation; while upon the Act for the Abolition of Fines and Recoveries, 3 & 4 Will. 4, c. 74, drawn by Mr. Brodie, which is in daily operation, and has effected a saving of expence to the amount of at least 100,000*l.* per annum in the transfer of real property, but very few questions, and those but of trifling importance, have occurred. Mr. Brodie bestowed the labour of more than six months in drawing that act, and although it relates to abstruse parts of the law, the clauses and arrangement are so clear and simple that it is impossible to misunderstand any part of it; and most of the questions which have arisen upon it have been occasioned by cases which had not been foreseen.

"In accordance with your wish that I should state the views which I entertain 'of the manner in which these bills, and indeed the entire series of measures of which they form part, ought to be proceeded with,' I beg leave to offer the following suggestions:—

"That it should be referred to one or more conveyancers, together with Mr. Booth and

Mr. Symonds, to frame the whole series of general bills, with such special bills as shall be necessary, in such manner as they shall think most expedient; and that power should be given them to call in occasional advice or assistance, when they may require it, with respect to such parts of the subject as they do not thoroughly understand. The course which I think it most probable they would adopt would be, first, to collect copies of all the private acts which have been passed during a few of the last years, and to class them, and ascertain in how many of the classes the same clauses are contained. They will then be able to determine the different sets of provisions which it will be most advisable to make the subjects of separate general acts. Afterwards, from their own experience, the law reports, and other sources of information, they will ascertain the questions and difficulties which have arisen upon any of the provisions, and determine the best means of removing them; and finally, they will re-draw, or correct and complete, in as perfect a manner as the greatest care and consideration, with such further advice as they may obtain, will enable them to do, the clauses to be contained in the several bills.

"In conclusion, I beg leave to state some considerations which, in addition to the advantages mentioned in Mr. Booth's report, appear to me to render it of great importance to the public that the proposed measures, or some of them, should be carried into effect. Almost every purchase made by a railway or other company includes more land than is required for the purposes of the undertaking, and the residue is re-sold under the powers of the act. Whenever land is purchased from a tenant for life or other person who is unable to sell it without the authority of the act, the purchase money is laid out, in pursuance of the clauses in the act, in the purchase of some other estate, which is settled in the same manner. Under one or other of these provisions a considerable part of the land in the kingdom is now held; and, in a few years, a much greater part of it will be held under titles which depend upon powers in private acts of Parliament. If such powers had been contained in a general act, they would be known to every lawyer, and occasion but little difficulty; but, at present, in order to show in every case that the directions of the particular private act have been strictly adhered to, it is considered necessary to recite the clauses of the act in the conveyances, and to set them out in the abstracts of title, and thereby the expences of the transfer of the land, and the trouble of the counsel who have to advise on the title to it, are considerably increased.

"The legal mode of transferring shares in railway and other companies, and the evidence necessary to maintain a title to them, depend upon the clauses in the private act of the particular company, and such clauses differ considerably in different acts; it is therefore impossible that the laws by which this description of property is governed can be known to the public, or even to the brokers who are agents

of the persons who purchase the shares; opportunities are consequently afforded for fraud. In some cases, a purchaser accepts a mere delivery of the certificates of the shares, which gives no title, and it frequently happens that the title of a derivative owner depends entirely upon the honesty of the original proprietor of the shares. So large a part of the capital of the country is now invested in shares of this description, that the mode of transferring them, and the laws relating to them, ought to be as uniform and as well known as the laws relating to real or funded property.

"There are other provisions in private acts which affect the public at large, and it appears to me that all laws (except such as are not confined in their operation to the persons to whom privileges are given by private acts) should be contained in general and public acts.

"It may be thought worthy of consideration whether it would not be advantageous to extend the provisions in the proposed general acts to all future proceedings under private acts already passed, in which provisions for similar purposes are contained; and if so extensive a measure were not approved of, there could not, I apprehend, be any objection to give to companies established under existing acts, with the consent of a large majority at a general meeting, and after proper advertisements, the power of adopting, with respect to future transactions, the provisions of the general acts, instead of those in their own private acts."

Mr. Tyrrell was afterwards examined by the Committee, and we extract the following from his evidence: He was requested to state to the committee any observations explaining his views.

"I regret (he said) that I was obliged to write that letter without being able to give to the subject the full consideration which it required, being at the time unwell, and harrassed with business of more than ordinary pressure. Feeling much interest in the subject, I have since investigated it more fully, and am sorry to say that I have found the task of completing the proposed series of general bills to be one of much greater magnitude and difficulty than I had anticipated. The number and variety of classes of private bills are greater than I supposed them to have been, and much consideration will be required in determining the provisions which will be most proper for those cases which are now unprovided for, and also for those, the present provisions for which are defective or objectionable. I trust that I shall not be deemed impertinent in adding, that, considering the importance and the nature of the proposed measures, it appears to me to be highly desirable that they should be introduced with the sanction or concurrence of some of the members of the House of Lords. The forms of private bills have been more considered in the House of Lords than in the House of Commons, and the proposed mea-

asures will supersede many of the Standing Orders of the Upper House. I will also venture to observe, that the jurisdiction which Lord Shaftesbury has so long exercised with respect to private bills, and his great influence upon all questions relating to them, must render it almost impossible to expect that the House of Lords would pass the proposed measures without his concurrence; and if they should, their success would be greatly diminished if he were to permit other clauses for similar purposes to be afterwards inserted in private bills. In this manner the utility of the General Inclosure Act has been lessened by the insertion in particular inclosure bills of clauses, of which some were improper, and others ought to have been contained in a public bill for mending the General Inclosure Act. I also consider it to be important that the proposed bills should receive the approbation of influential members of both Houses of Parliament, in order that they might be prepared and feel an interest in defending them from ill-considered alterations during their progress through parliament. The further consideration of the subject has strengthened my opinion of the great advantages which would result from the proposed measures, if they were carried into effect in a perfect and comprehensive manner.

With reference to the working of the *General Turnpike Act*, Mr. Tyrrell stated,—

"That the General Act has been the means of reducing very considerably the length of the particular roads acts, and has thereby rendered them more intelligible; it has produced an uniformity in the laws relating to a particular subject, and every decision of a question arising upon it settles that question with reference to all other roads. I have heard country gentlemen say that they would have had but little knowledge of the laws which regulate their powers and duties as trustees of roads, if there had not been a general act. The general act is published in a convenient form, with useful indexes, and the same persons belonging to several trusts, bring to one board the knowledge they have gained from the discussion of the same question at another board, and pay more attention to questions which arise upon the provisions of the act, because they know that they are equally applicable with respect to other roads.

The increasing inconvenience, from the varied provisions of *private acts*, was next inquired into, and Mr. Tyrrell stated,—

"That he had reason to know that a very large proportion of the increase of the business in the Court of Chancery has been occasioned by questions arising upon those acts, particularly the Railway Acts. The clauses for similar purposes vary so much in different acts, that a decision upon a clause in one act, has but seldom the effect of determining the proper construction of a clause

in any other act. The new and various modifications of property created by the present acts will occasion inconvenience, and produce many difficult questions. As an example, I will mention the clauses in many of the present acts, and in Mr. Booth's '*Lands Acquisition act*,' relating to copyholds. When copy-land is wanted for a railway, or other purpose of an act of parliament, the enfranchisement of it ought to be purchased. A copyholder has no right to dig up and alter the nature of the surface; and the duties and incidents of copyhold tenure are not applicable to a corporation; therefore the freehold tenure ought to be purchased, as well where the land is copyhold as where it is leasehold. But in modern private acts, and in Mr. Booth's bill, clauses are inserted enabling the corporations to become copyholders, and giving the lords compensation for the consequent loss of fines and services, and providing that the lands in respect of which such compensation shall be given shall always continue free from such fines and services. When part of such land is sold again, it will probably be thrown into some other field, or form part of the site of a building, of which the other part will be held according to the ordinary copyhold tenure, and after several years, there will be great difficulty in distinguishing the part which is held under the new tenure: and many questions will arise respecting the right to timber and mines, and the power of the owner to commit waste. If the freehold had been purchased, the boundaries would probably be better known, because it would probably pass by a different conveyance from that of the adjoining copyhold land; but where both pass by the same surrender in the lord's court it is not probable that their boundaries will be so carefully distinguished, and then disputes and difficulties will arise in assessing the fines and proving the titles. The laws of real property are already too complicated, and every addition to the varieties and modifications of ownership is of itself an evil.

"The *railway companies* being desirous of completing their undertaking with as little expense as possible, are glad to avoid the purchase of the freehold tenure. The solicitors, or some of their friends, may be the stewards of manors, and they feel an interest in keeping up copyholds, and I believe some lords of manors have a prejudice against diminishing the number of copyholds held of their manors.

In answer to a question by the Chairman as to a practice in private bills of introducing provisions specially directed for certain purposes, which are really provided for by the common law, Mr. Tyrrell stated as an example the form of conveyance which is introduced into most of the modern acts, and is inserted in Mr. Booth's *Lands Acquisition Act*; it is of very little practical benefit, and in its various forms creates a variety of new modes of assurance; it saves nothing but the expense of the lease for a year, which ought to be abolished by a public act, enabling the conveyance of land to be made by one deed, instead

of two. Such a deed might without any enactment for that purpose be made, when the circumstances of the case would permit, as short as any of the forms. The most usual form is applicable only to the case where the seller is the sole and absolute owner of the property, a case which does not occur in one instance out of a hundred; almost always the land is subject to a mortgage, or charge, or there is a life estate, or two or more of several varieties of interests subsisting in it at the same time. It is therefore requisite that several persons should join in the conveyance, and that their different interests should be shown. In all such cases the prescribed form operates inconveniently, and doubts arise with respect to forms of conveyance to purchasers, as to the effect of a conveyance according to such forms in passing the legal estate in cases where uses are declared, or any purpose beyond that of a mere simple conveyance is attempted by the deed.

In answer to a question by Mr. Freshfield, Mr. Tyrrell stated, that the usage is to adopt the common mode of conveyance, and to disregard the form except so far as to leave out the lease for a year. In cases in which the act has declared that the conveyance shall be in the form or to the effect following, it has been my practice to disregard the form. As another example inconsistent with the rules of common law, I will mention the case of persons being made to take property in succession who are not expressly made corporations. A corporation is a body which has a perpetual succession and a common seal; but commissioners and trustees, secretaries and other persons, are directed and declared to take land in succession; and then it is doubtful in what cases the ordinary actions and other remedies can be maintained by and against such persons. In all cases in which a corporation is not expressly created by the act, the landed property should be vested in trustees.

He also added that the new variety in the modes of devolution of property, and the doubts respecting the remedies and incidents connected with it. The various ways (most of them very imperfect) in which the provisions in private acts are framed, occasion great difficulties in carrying them into execution, and frequently render it necessary to apply to a court of equity for its interference.

"If the general acts which have been proposed were passed, the Houses of Parliament, and particularly the Committees, would be relieved from a great part of their duty with respect to private business. In many cases the bills would be almost as short as the breviate, and the House would only have to determine questions of expediency and amount. For instance, in railway bills, upon the line to be adopted, the amount of capital to be raised, the amount of tolls, and a few other particulars, all the objects of a bill, would be readily seen, and therefore improper provisions would not be overlooked; all the laws relating to the same subject would be uniform; and the public would not be inconvenienced by imperfect laws

obtained by interested parties for their own benefit."

Mr. Tyrrell then proceeded to state as follows:—

"I have considered the acts proposed by Mr. Booth, and the plan of Mr. Symons, and in addition to the remarks in my letter I may observe, that when the subject has been well considered by competent persons, it will most probably be thought advisable that the general acts should be framed in a manner between the plan of Mr. Booth and that of Mr. Symons. The bills prepared by Mr. Booth contain the present provisions of private acts in an improved state, but in my opinion some of those provisions are unnecessary: several of them do not, I conceive, effect the objects intended to be provided for by them. Some cases are totally unprovided for, and the provisions for others are imperfect or objectionable. On these grounds I have ventured to suggest that the bills should be re-considered, and for that purpose, that all the questions which have arisen upon the present acts and have become the subjects of litigation, and all the cases in which difficulties of construction or proceeding are known to have occurred, should be collected and considered, and that it should be determined what provisions ought to be made for the different cases which are now provided for imperfectly, and then the bills should be corrected, and, where necessary, remodelled, in the most perfect manner. I will state a few of the defects in what I believe to be the most important and the most difficult of the acts prepared by Mr. Booth, which he calls the "Lands Acquisition Act." The 8th clause empowers (among other persons) tenants in tail and married women to sell land, although they have full power to do so without the act. The only case in which such a power is necessary is where the wife is an infant, and that case is not provided for. There are some other cases in which the purchase of land is required, to which the powers of the act do not extend. One instance is where the land forms part of estates subject to a rent originally reserved by the Crown and belonging to the church or a charity, or persons under some other disability or incapacity. This is not uncommon, particularly in towns and other places near dissolved monasteries. The estates of such monasteries were in most cases granted by the Crown, subject to rents, and such rents have afterwards been granted to the church or to a charity, or sold. The church or charity or person under disability, cannot release the land purchased from the rent; and if the whole purchase money for the land were laid out in the purchase of another estate, such estate could not be charged with the rent with the same powers for recovering it as might have been exercised against the land sold, because peculiar remedies belong to rents reserved upon grants from the Crown. I have met with two cases in which this objection occurred, and upon consultation with the late Mr. Serjeant Lens, and Mr. Bell, and Mr. Baron



Bolland, and Mr. Preston, it was determined that the land could not be purchased under the powers of the act, because the act contained no provision under which the parties entitled to the rent could obtain a fair equivalent. As instances in which the present clauses are defective, I will allude to cases in which the provisions which direct that when land purchased belongs to parties under disability or incapacity, the purchase money shall be paid into the bank and laid out under the direction of the Court of Exchequer in land to be settled in the same manner, and in the mean time in the 3l. per cents., operate very unjustly. Where land is purchased which belongs to a bishop or other member of the church entitled to let it on renewable leases, the property of the church is diminished. According to Mr. Finlaison's calculation, where such land is let for three lives, and those lives are young, the value of the estate of the lessee is worth 94 one-hundredth parts, and the value of the reversion only the remaining six one-hundredth parts. In these cases the 94 one-hundred or other the value of the leasehold interest is paid to the person entitled to the lease, and the small residue of the purchase money, which may be little more than one-twentieth part of it, is paid into the bank as the property of the church, and laid out in the purchase of another estate, and such estate being in possession, the bishop or other incumbent obtains the power of selling the whole interest in it which he has authority to let, and which, if for three lives, may according to Mr. Finlaison, be 94 one-hundredth parts of it. The future incumbent therefore can obtain fines of the value of little more than one-twentieth part of the fines which he would have obtained for the land sold, and the power of obtaining such fines is postponed by the lease in possession granted by the incumbent. A case of a different description occurs when the land purchased is subject to a leasehold interest for 20 years, or some other short term, of which the owner is tenant for life under a will, with an executory gift after his death to his children who shall then be living, or some other person not ascertained. In this case the tenant for life suffers a loss; the money paid for the purchase of the leasehold interest must be paid into the bank, and he only gets the interest of it during his life, although if the land had not been purchased the lease might almost have run out in his lifetime. A clause which Lord Shaftesbury has lately required to be inserted in private acts, to oblige companies to pay the expenses of making out the title of the land purchased by them, and the other costs of the solicitor for the seller, sometimes operates unjustly. Estates are not unfrequently bought for three or four years' purchase less than their value, because the purchaser agrees to dispense with the getting in of outstanding estates or charges or with evidences of pedigrees, or other expensive requisites, to complete the title; and when part of such an estate is purchased under a private act the owner obtains from the company not only the full value of the land, as if he had

a perfect title to it, but also the benefit of having the objectionable title of the rest of the estate made perfect at the expense of the company."

In answer to other questions, Mr. Tyrrell said,—

"I have also heard that the judges have complained of defects in the standing order clauses in estate bills, and have altered them, but that Lord Shaftesbury on account of the authority of the Standing Orders, has refused to permit such alterations.

"It might, I think, be provided by an enactment that, with respect to some of the provisions, all future proceedings under acts of parliament which have passed should be regulated by the general acts, and not by the provisions contained in the particular act.

"The general act, or model bill, would be found to contain in substance the same provisions as the act, but in a much more convenient and amended form. If it were considered improper to give to some of the general acts such retrospective operation, an option might be given, which has been done in some private bills, of adopting in future proceedings the provisions of the general acts, or of the act which has passed. I recollect that in one of the acts for extending the improvements in the city of London, near London Bridge, some new clauses were inserted, as improvements of the clauses in the former acts, for the purchase of land; and it was declared by a clause in the further act, that the purchases which had not been completed under the prior acts, might be proceeded with either according to the provisions of the further act, or those contained in the prior acts.

With respect to the preparation of the proposed model bills, Mr. Tyrrell said:—

"I think it would be necessary that the persons employed to prepare the bills should have the sanction of some members of both Houses of Parliament, with respect to the nature of some of the new provisions which ought to be inserted in them. The opinion of Lord Shaftesbury on such points would be particularly valuable if it could possibly be obtained. I apprehend that a general plan might be formed, and the number of general bills might be determined upon, and two or three of the most important might perhaps be prepared for the next session, and the rest of them for the following session. It would be easy to determine in the first instance how many bills there should be, but the drawing of them would necessarily take a considerable time.

"I would recommend that which is called the Lands' Acquisition Act, and an act for regulating transferrable shares in Joint Stock Companies, as the two upon which the greater number of questions arise, and in which the public are the most deeply interested.

"Next to those two, the most urgent and the most important is perhaps the General Inclosure Act, unless it is expected that there will be an end of inclosures. I believe there were 16 or 17 last year; if there should continue to

be so many each year, the General Inclosure Act would be a most important bill, because inclosure acts affect so extensively the titles of estates. If there be no probability of many more inclosures, there may be others of the general acts which ought to be preferred.

"A railway bill would consist of five or six of the general acts; they would be, the Joint Stock Companies Act, the Transfer of Shares Act, the Companies' Mortgage Act, which ought, I think, to be a separate measure, giving remedies to parties to whom they mortgage their property, and which remedies are at present very defective; the Lands' Acquisition Act, the General Railway Act, containing all peculiar laws relating to railroads; and, unless the provisions relating to tolls are contained in the railway act, the Tolls Act.

"The object might be accomplished, either as Mr. Booth has done, by declaring that the general acts shall be incorporated with the particular act, and which is, perhaps, the preferable mode, or the bill might provide that the subscribers should be a corporation, according to the provisions of the Joint Stock Company Act, and should have power to raise a certain capital according to the Transfer of Shares Act, and to raise a certain sum by mortgage, according to the Companies Mortgage Act, and might make the railway according to the plan deposited and the General Railway Act, and might take the land in the map and schedule according to the Lands Acquisition Act; and might take the tolls in the schedule according to the Tolls' Act. There would also be a few clauses for appointing the first meeting, and declaring the number of the directors, and the scale of voting.

With regard to the professional aid requisite in settling this important branch of legislation the following evidence is given:—

"There are many members of the profession who always feel an interest in promoting any beneficial public object.

"The compensation which might be offered must necessarily be taken into consideration, because it is well known that such employment is not advantageous, particularly to conveyancers. In proof of this, I may be allowed to mention, that the duties of the Real Property Commission permanently reduced to a considerable extent my income, and that of some of my colleagues. The income of conveyancers does not, like that of counsel, who always attend the court, depend upon the business done in the courts. It entirely depends on their powers of application, their readiness, and the nature of their business; for conveyancers in full practice have always arrears of business, and have no regular vacation. Before the Real Property Commission, my business was principally that of what are termed regular clients, that is, solicitors who send to a counsel all the business relating to his branch of the profession which arises in their offices, and in return preference is given to their papers over those which are oc-

casional sent by other solicitors. The light and least important business, which will seldom admit of much delay, is always the most profitable as well as the least laborious. The amount of fees usually paid increases in regular arithmetical progression with the length of the papers, while the labour may be said to increase also in almost geometrical progression. Generally speaking, ten sets of papers, with every of which a fee of two guineas is paid, will not occupy more time than one set with which a fee of ten guineas is paid, and one transaction for which a fee of fifty guineas is paid, will require more time than a proportionably greater number of businesses for every of which a fee of five guineas or ten guineas is paid. Solicitors will often exercise great patience, so long as they know that a counsel is occupied with other business of a similar kind, but they do not feel justified in permitting the business of their clients to be delayed while the counsel is occupied with a public employment. During the continuance of the Real Property Commission, my regular clients sent their light and pressing business to other counsel, and since that time I have been employed almost exclusively in giving opinions on difficult questions, and in businesses of a heavy and complicated nature, from which I cannot get any thing like the same income. Among the titles on which I had to advise during the last year, there were two, the abstracts of each of which consisted of more than 800 sheets of paper; and it must be evident that the labour of tracing all the various connexions between different transactions relating to the same subject, which require to be stated at such length, must require more grasp of facts, more continued attention, and, consequently, more time in proportion than the labour of considering a statement of the transactions during the same period relating to another estate which can be comprised in a few pages."

"Mr. Aglionby.—Do you not know, from your knowledge of the profession, that if the most eminent men are thrown out of business for any length of time, it becomes almost impossible to recover their own clients, or to get into their regular old practice and business?—I do; this applies to counsel who attend the Courts, and therefore meet again their former clients; and it is still more the case with conveyancers who are not again seen by their old clients.

"Sir James Graham.—Do you think the difficulty in this case an insuperable difficulty?—No, I do not think it an insuperable difficulty, because I do not think the proposed employment to be one of very long duration, and the counsel employed might attend to and keep together their own business at the same time.

"You were understood to point out a period of six months in preparing these measures?—In stating that period, I think I underrated the time which would be required for the work.

"Something would depend on the assistance a gentleman of eminence might command?—Yes.

"If he had an unlimited power of commanding assistance, you think in five or six months he might perfect three or four of those great measures?—I do.

"It appears to me to be necessary that the work should be sanctioned by a joint committee of the two Houses of Parliament, or by a commission, of which influential members of both Houses should be members. I venture to submit that, under the direction of such a committee or commission, a certain number of lawyers might proceed, first, to class the private acts, and determine upon the number and description of general acts which they would recommend, and then to make a report of their proceedings, and of those points on which they might wish to obtain the direction of the committee, particularly of the different new provisions which might appear to be necessary; and as often as any such report might be made, the chairman, or some other person, might order a meeting of the committee to be called. I do not think that many such meetings would be required to determine all the questions which would arise upon the series of measures.

"I am sure that nothing would be more useful than the employment of a certain number of professional gentlemen for many similar purposes. When the measures for the improvement and regulation of the private business have been completed, their time could be advantageously devoted to the consolidation, to a considerable degree of, the statute law. A commission is now proceeding with that work, as far as relates to the criminal law; and a Report has been made by commissioners on the subject of a general consolidation of the statute law. I believe it to be the prevailing and correct opinion, that such consolidation, to a considerable extent, is essential to any general systematic reform of the law; and the acts recently passed for the amendment of the laws have been consolidations of parts of the statute law. The commissioners recommended two modes of consolidation; one, that the present statutes should be brought together in the same language, in chronological order; the other, that the statutes should be new modelled. I believe that the majority of the profession are of opinion that neither of these modes should be exclusively adopted, and that it would be wrong to touch some of the old leading statutes, such as the Statute de Donis and the Statute of Uses, and that it would be equally wrong to leave several classes of statutes, such, for instance, as those relating to the property of the church, in their present defective state. It should first be determined which of the statutes should be consolidated, and which of them should remain untouched, and then the work of consolidation might be proceeded with by degrees.

"I am quite sure that in many ways the public would derive much greater advantages from having some lawyers taken out of their profession, and constantly employed, than by any partial employment of them. It is clear

that their work would be better done. Much of it requires long continued attention, and much delay must be occasioned by the interruptions necessary for the purpose of attending to their other business. I have long been of opinion, that a general reform of the law can never be accomplished in a comprehensive or perfect manner, unless some competent lawyers are taken out of their profession for that purpose.

"I will mention that some bills which are now private bills, might, I think very beneficially, be rendered unnecessary by general acts. By an amendment of Mr. Portman's Act, for instance, the improvement of towns might be effected. There is a general drainage bill now in the House, and on the same principle I believe that three or four other acts might advantageously be passed; and I will also venture to observe, that I think it is important, with reference to this subject, that power should be given to consider and determine whether a few general bills should not be passed, in addition to those relating to private bills. I think that a few such acts would simplify the proposed general bills, as well as other future bills. For instance, one might provide that the repeal of an act of parliament shall not revive acts repealed by it, unless an intention to do so be expressed, and that the repeal of an act should not defeat remedies for rights, liabilities, or penalties created or incurred under the act before it was repealed, with other provisions to prevent inconveniences from the transitory state of the law, usually occasioned by the alteration of it. And another of such acts might alter the construction or meaning of those words which at present have a technical meaning in acts of parliament, contrary to their usual and ordinary sense; such as that months should mean calendar, and not (as they now mean) lunar months; it is also, I think, desirable that the present mode of ingrossing bills should be considered, and that inquiry should be made, whether the sections might not be numbered, and the constant repetition of the words 'And be it further enacted,' avoided."

As to the number of gentlemen sufficient to perform the first stage of the work, Mr. Tyrrell said,—

"I think it would be desirable not to have too many, and to select those who, most probably, would work well together. I would beg leave to suggest that the work might be entrusted to three conveyancers, and they should have the assistance of Mr. Booth, as an equity lawyer, and also of some common law barrister, to whom they could apply for assistance and advice whenever they might require it. Perhaps also the benefit of the assistance of Mr. Symonds could be given to them as secretary. I think that a large number impede, rather than facilitate business."

### THIRD REPORT OF THE SELECT COMMITTEE ON PRINTED PAPERS.

The Select Committee appointed to inquire into the proceedings in the action of *Stockdale v. Hansard*, and who were empowered to report their opinion thereupon from time to time to the House;—have proceeded in the consideration of the matters to them referred, and have agreed to the following report:—

Your committee, in their report of the 15th of June, in which they submitted for the consideration of the House their views as to the different lines of conduct which might be pursued with respect to the damages awarded against the defendants in the action of *Stockdale v. Hansard*, expressed their hope that they might shortly be enabled to present to the House a further report, in which it was their intention to have entered into the consideration of the important general questions which have been raised by these proceedings. They have now to entreat the indulgence of the House in stating that this hope has been disappointed, and that they have not found it possible to complete the task which they were called upon to undertake.

The consideration which they have already given to this important subject has been sufficient to satisfy their own minds that the opinion upon it, expressed by a former Committee and confirmed by a vote of the House in the year of 1837, was strictly in accordance with the law and with the constitution of this country; but they have found that much more labour and research than they had anticipated will be required in preparing such an exposition as they would wish to furnish, of the grounds on which this conclusion is to be supported, and in weighing, as they deserve, the reasons assigned for the contrary judgment which has been pronounced by the Court of Queen's Bench. The late period of the session at which this inquiry was commenced, and the professional avocations of some of their members, whose legal and constitutional learning rendered their assistance of the greatest value to them, have made it impossible for your committee satisfactorily to accomplish an undertaking which has proved thus laborious. Under these circumstances it has appeared to them that it will be advisable rather to postpone for a time making their final report than to present one which they know must necessarily be incomplete and unsatisfactory to themselves, upon a question so deeply affecting the authority of the house, and its means of discharging the high duties with which it is intrusted.

Your committee are not insensible to the inconvenience of this delay, but upon the whole they think it will be attended with less disadvantage than must result from their attempting to agree to a report without having been able to give it all the consideration it requires; and they are the more disposed to come to this conclusion in consequence of the opportunity

which has recently been afforded to the House of manifesting its determination to maintain its privileges by its own authority. They trust that the resolutions which the House adopted, upon the notice given to Messrs. Hansard of another action for the publication of a report printed by order of the house, will serve as a warning of the consequences to which any similar proceedings will expose the parties by whom they may be attempted.

For these reasons, your committee beg leave respectfully to request that they may be permitted to defer, for the present, the further prosecution of their inquiry, in order that the consideration of this subject may be resumed on the commencement of the ensuing session.  
20th August 1839.

### BILLS NOT PASSED LAST SESSION.

A RETURN of the names and titles of all bills, private as well as public, which, having passed the House of Commons in the present session, have not been returned from the other House of Parliament; also, of all bills during the same period, which, having been returned from the other House of Parliament with alterations, have been afterwards dissented from and dropped in the House of Commons; with the dates at which such bills passed this House.

#### PRIVATE BILLS.

A return of the names and titles of all private bills which, having passed the House of Commons in the present session, have not been returned from the other House of Parliament.

1. Belper Small Debts.
2. Hatfield (York) Small Debts.
3. Wirksworth Small Debts.
4. Halifax, Huddersfield, &c., Small Debts, No. 1.
5. Halifax, Huddersfield, &c., Small Debts, No. 2.
6. Norwich Improvement.

N.B.—There has been no private bill returned from the other House of Parliament with alterations, and afterwards dissented from and dropped in the House of Commons.

EDWARD JOHNSON.

*Private Bill Office, House of  
Commons, August 1839.*

#### PUBLIC BILLS.

A Return of the names and titles of all public bills which, having passed the House of Commons in the present session, have not been returned from the other House of Parliament; also, of all bills, during the same period, which, having been returned from the other House of Parliament with alterations, have been afterwards dissented from and dropped in the House of Commons;

with the dates at which such bills passed this House.

1. Bills which, having passed the House of Commons in the present session, have not been returned from the other House of Parliament.

*Read third time and passed in the House of Commons.*

Admiralty Court .....	5 August.
Copyhold Enfranchisement .....	3 July.
Clerk of the Peace .....	10 June.
Double and Treble Costs .....	10 June.
Electors' Removal .....	27 June.
High Sheriff's Expenses .....	13 June.
Joint Tenants' Voting (Ireland) ..	4 July.
Inland Warehousing .....	22 July.
Registers of Births, &c. ....	18 July.
Slave Trade (Portugal) .....	25 July.
Sheep Stealers (Ireland) .....	2 August.

2. Bills which, having been returned from the other House of Parliament with alterations, have been afterwards dissented from and dropped in the House of Commons.

*Read third time and passed in the House of Commons*

Bills of Exchange .....	14 June.
Another bill brought in and passed.	
Municipal Corporations (Ireland) ..	15 July.
Public Bill Office, }	
27 August 1839. }	

## PARLIAMENTARY RETURNS.

### PRISONERS CONFINED FOR DEBT.

THE following extracts from returns made to an order of the House of Commons, dated the 28th June, 1839, will shew the number of persons confined for debt in England and Wales, Scotland and Ireland; with the years when their Imprisonment commenced:—

#### ENGLAND AND WALES.

1812	2
1814	2
1816	3
1819	1
1821	1
1822	4
1823	1
1824	2
1825	4
1826	3
1827	5
1828	5
1829	6
1830	7
1831	19
1832	10
1833	13
1834	19
1835	28
1836	42
1837	61
1838	160
1839	1407

Total for England and Wales . 1805

#### SCOTLAND.

1838	8
1839	69
Total for Scotland	77

#### IRELAND

1811	1
1823	2
1826	1
1827	4
1829	1
1830	1
1831	2
1832	4
1833	3
1834	8
1835	13
1836	11
1837	24
1838	107
1839	742

Total for Ireland . 924

Number of persons confined for Debt in England and Wales . 1805

Do.	Do. in Scotland	77
Do.	Do. in Ireland	924

Total in the United Kingdom . 2806

The following Returns shew the number of Persons confined for Debt in the City of London, including the Fleet; also in Horsemonger Lane, the Palace Court, and the Queen's Bench.

#### WHITECROSS STREET.

1831	1
1834	1
1835	2
1837	3
1838	23
1839	244

Total . 273

Samuel Barrett, Keeper.

3rd July, 1839.

#### THE FLEET.

1814	1
1824	1
1825	1
1826	1
1827	1
1828	1
1829	1
1831	3
1833	9
1834	3
1835	5
1836	6
1837	8
1838	15
1839	49

Total . 105

W. R. H. Brown, Warden.

28th June 1839.

HORSEMONGER LANE.

1828	.	.	.	1
1834	.	.	.	2
1835	.	.	.	1
1836	.	.	.	3
1837	.	.	.	3
1838	.	.	.	6
1839	.	.	.	86

Total . 102

John Keene, Keeper.

5th July, 1839.

MARSHALSEA AND PALACE COURTS.

1836	.	.	.	3
1837	.	.	.	2
1838	.	.	.	8
1839	.	.	.	30

Total . 43

J. Rutland, Deputy Marshal.

3rd July, 1839.

QUEEN'S BENCH.

1812	.	.	.	1
1816	.	.	.	1
1821	.	.	.	1
1822	.	.	.	2
1825	.	.	.	3
1826	.	.	.	2
1827	.	.	.	2
1828	.	.	.	2
1829	.	.	.	4
1830	.	.	.	4
1831	.	.	.	12
1832	.	.	.	6
1834	.	.	.	5
1835	.	.	.	14
1836	.	.	.	12
1837	.	.	.	23
1838	.	.	.	23
1839	.	.	.	44

Total . 161

Thos. Chapman, Marshal.

28th June, 1839.

We have not thought it necessary to give the details of each county. The total is stated above.

BILL OF COSTS IN 1608.

Imprimis my fees in the cause w'ch was dependinge sundry and divers termes in the King's Bench, betweene Will'm Hickman, pl't, and Mr. Davenport, defend't, for counsell in drawinge three sev'all pleas att three sev'all tymes, beinge the like fees w'ch Mr. Crooke had besyde sundrye tymes attendant att Mr. Serjant Hearnies chambers . . . xxx<sup>s</sup>

It'm the like cause in the said Court betweene Mr. Pritchard, pl't, and Mr. Davenport, defend't, beinge the like fees w'ch Mr. Crooke had . . . xxx<sup>s</sup>

It'm in the like cause, wherein Mr. Crooke was pl't, and Mr. Davenport defend't . . .

It'm for drawinge a petic'on to the Lord Cheife Justice, to certefie him the true estate of the said causes, where uppon he would not suffer anye further p'ceedinges in the said Court . . . x<sup>s</sup>

It'm for ingrossinge of the said petic'on . . . ij<sup>s</sup>

It'm for drawinge of a petic'on to my Lord Stanhoppe, to sett downe the true estate of the said causes, where uppon he wrott to my Lord Cheife Justice . . . x<sup>s</sup>

It'm for engrossinge of the said petic'on . . . ij<sup>s</sup>

It'm in the action in the Comon Plees, wherein Will'm Hickman was pl't, and Mr. Davenport def't . . . x<sup>s</sup>

It'm in the same Court in the acc'on wherein Mr. Pritchard was pl't, and Mr. Davenport defend't . . . x<sup>s</sup>

It'm my fee touchinge the said cause to attend Mr. Justice Chawdye att his chamber, beinge then as I take it, Lord Cheife Justice of the Comon Plees, to answeare to such causes as weare objected agaynst Mr. Davenport touchinge the said cause . . . x<sup>s</sup>

It'm my fee for the cause wherein Massie is pl't against Mr. Page, in wh'ch suit Mr. Aston is attorney . . . x<sup>s</sup>

It'm my fee for the cause wherein is pl't against Mr. Clarke, in w'ch suit Mr. Aston is attorney . . . x<sup>s</sup>

It'm a petic'on drawne to my Lord Cheife Justice, to move him touchinge the makinge of clothes, and to streche them and transport them . . . x<sup>s</sup>

It'm for engrossinge of the same petic'on . . . ij<sup>s</sup>

It'm for drawinge of a petic'on to my Lord Chancellor, in answeare of the objection of my Lord Bartlett and others, which they made against Mr. Maio'r and his brethren, touchinge the justices of peace w'thin this countie, w'ch they would be w'thin this countie . . . x<sup>s</sup>

for thengrossing of the same peti'con . . . . .	ij <sup>s</sup>	to at leaste, for 4, 5, or 6 yeares, as I take it . . . . .	vii
It'm my stay w'th twoe men and three horses in London, at the least x dayes and more, to have awnswere of my lord's peti'con, and to attend the judges, that both p'ties might be hardetouching the said cause of justices of peace, and when thother p'tie came not, I makinge the justices acquainted with the poyntes of the ch'res, and shewing them the same, vidz.; for my two men xi <sup>d</sup> . a-day a-peace, and my selfe ij <sup>s</sup> . a day, and my three horses xvij a day . . . . .	lv <sup>s</sup>	Item for drawing the deade of feofment for Bablake-lande . . . . .	x <sup>s</sup>
It'm to my Lord Chauncellor's secretaire for expedic'on to p'cure the peti'con awnswared, and for the coppie of my lorde lettere sent to the judges touching the said causes, and his paines in hastinge p'curinge the saide letters . . . . .	xx <sup>s</sup>	Item for drawing of the indenture of covenants, and for the declaration of the trust of that feofment . . . . .	x <sup>s</sup>
Item to Mr. Justice Walmesley man for examininge p'te of the ch're according to the direction of my Lord Chauncellor and the Judges . . . . .	v <sup>s</sup>	Item for drawing the deade of feofment for ould fillonglye lands . . . . .	x <sup>s</sup>
Item to twoe of Mr. Justice Warburton's men for examininge of the whole ch're, by Mr. Justis Warburton's appoyntem't, because it was objected that the Judges could not judge upon the matter in question unless the whole charter was perused, wherein they spent the best part of ij dayes . . . . .	xiiij <sup>s</sup> iiij <sup>d</sup>	Item for the drawing of the indenture of covenant, and the trust for the same lands . . . . .	x <sup>s</sup>
Item for drawing of sev'all formes of p'ceedinges, petitions, notes, and other wrightinges towching the p'cedinges for the ch'res wherein it shoulde have bin renewed, and my attendants . . . . .	iiij <sup>ll</sup>	Item for the drawing of the deede of feofment for Coxon's land . . . . .	x <sup>s</sup>
. . . w'ch, accordiag to the like ffees as Mr. fuller had, cometh to iiij <sup>ll</sup> , is not soe much as Mr. fuller had . . . . .	iiij <sup>ll</sup>	Item for drawing the indenture of covenant and the declarac'on of the trust . . . . .	x <sup>s</sup>
Item for the coppinge out of such coppies and draughts which were draune . . . . .	x <sup>s</sup>	It'm for the matter dependinge in the King's Bench against Mr. Mills and Mr. Shewell, w'ch concerne the wryt of restituc'on for the counsell in makinge of the returne . . . . .	x
Allsoe Mr. fuller had after as I remember of my selfe, after their going fourth of the towne . . . . .		It'm for counsell in joyninge the issue . . . . .	x <sup>s</sup>
Item for coppinge out of the chr'es which amount to 130 sheets, or there aboutes, canne be noe lese then . . . . .	xi <sup>s</sup>	It'm for two sev'all motions in the Kinge Benche for the same cause . . . . .	xx <sup>s</sup>
Item to Mr Wolland in the Crowne Office for the Kinge's Bench, being behinde for yeares after xx <sup>s</sup> . a yeare, w'ch I have given may worde shall be sent him p'esently, which cometh		It'm for my ffee at the tryall . . . . .	x <sup>s</sup>
		It'm for counsell for the plea in the replevyne for the rent fourth of Mr. Warran graunde . . . . .	x <sup>s</sup>
		It'm for Mr. Welland, his ffee, beinge Clarke of the Crowne Office, when informac'on was given that a quo warranto was drawinge against the cittie . . . . .	iiij <sup>s</sup> iiij <sup>d</sup>
		It'm to Mr. Serjeant Nicholas for his counsell touchinge the charter for and concernynge the royall americiunte . . . . .	x <sup>s</sup>
		Besyd my contynual attendinge fourth of my chamber at Mr. Tippers, touchinge the late extended agreement for the parke	
		Besyd my attendinge fourth of my chamber uppon the Judges of Assises, touchinge informinge of them the poynt of our charter, touchinge the justice of peace, beinge many and sundry dayes and tymes . . . . .	
		It'm for drawinge of the deede touchinge the graunt of the rent charge from Mr. Barker to the	

maior, bailiffe, and comannaltie  
of the cittie . . . . . x<sup>s</sup>

Beside the pursuinge of all the  
charters to advise to answere  
the objections which the Lord  
Bartlett and others did objecte,  
touchinge the justice of peace in  
the cittie of Coventry, whereas I  
found sufficient matter to satisfie  
the judges, w<sup>ch</sup> spent me sundry  
dayes . . . . .

I have given Mr. Tipper my word  
for satisfieng him for his paynes,  
which if you do not, I must.

I have given Mr. Auditer Kinge's  
man my word for satisfieng of  
him for his paynes for surcharge  
about the 97<sup>th</sup> rent going fourth  
of the pryory lande, further than  
that w<sup>ch</sup> Mr. Shewell did give  
him.

It'm the serch for the copie of the  
will by w<sup>ch</sup> the 1000<sup>l</sup> is given  
to the Cittie, and a coppie of soe  
much of the will as concerneth  
that pay<sup>nt</sup>.

Item my attendinge to serch in the  
Tower and perusinge the recorde  
there touchinge Chillsmore, for  
and consernynge the Ducke  
Dome of Cornewell.

It'm to the lad that brought the  
wrytt from Warwick.

It'm to Mr. Kinge, the under she-  
riff's deputie, for the copie of  
the wrytt touchinge the rent of  
the subposed Earle's part.

It'm for drawinge of another feoff-  
ment to Mr. Barker of the said  
lande, for the payment of v<sup>l</sup> . . . . . x<sup>s</sup>

Item for th'engrossinge of the said  
indentures and deede of feoff-  
me<sup>t</sup> for Bablacke's lande; viz.  
for the payre of indentures  
xiiij<sup>s</sup>. iiij<sup>d</sup>., and for the deede of  
feoffm<sup>t</sup> v<sup>s</sup>., cometh to . . . . . xvij<sup>s</sup> iiij<sup>d</sup>

It'm for th'engrossinge of the said  
indentures and deede of feoffe-  
m<sup>t</sup> for old fillongley lande;  
viz. for the payre of indentures  
xiiij<sup>s</sup>. iiij<sup>d</sup>., and for the deede of  
feoffm<sup>t</sup> v<sup>s</sup> . . . . . xvij<sup>s</sup> iiij<sup>d</sup>

It'm for th'engrossinge of the said  
indentures and deede of feoffe-  
m<sup>t</sup> for the Pryory lande; viz.  
for the payre of indentures  
xiiij<sup>s</sup>. iiij<sup>d</sup>., and for the deede of  
feoffm<sup>t</sup> v<sup>s</sup> . . . . . xvij<sup>s</sup> iiij<sup>d</sup>

Item for th'engrossinge of the said  
indenture and deede of feoffe-  
m<sup>t</sup> for Cookeson's lande; viz.  
for the payre of indentures  
xiiij<sup>s</sup>. iiij<sup>d</sup>., and for the deede of  
feoffm<sup>t</sup> v<sup>s</sup> . . . . . xvij<sup>s</sup> iiij<sup>d</sup>

Note that some of these indentures  
or deedes weare, as I take it.  
twyce written, in respect of  
some parties dyed before thestate  
weare executed.

It'm for drawinge of a l're of  
attorney from Mr. Letheaborove  
to make lyverie and seison, be-  
cause he could not goe himselfe . . . . . x<sup>s</sup>

It'm for drawinge of sev'all peti-  
cions to the sev'all Lords of the  
Counsell beinge Comissioners,  
to have theire furtherance for the  
pke, att such tyme as you weare  
sent for before the Lo: of the  
Counsell from Mr. Tipper . . . . . x<sup>s</sup>

It'm for the wrytinge of the sev'all  
petic'ons, beinge att least five  
or six . . . . . viij<sup>s</sup>

It'm for the ingrossinge of the in-  
dentures from Mr. Barker to the  
Cittie, and the letter of attorney  
to receive livery and seison . . . . . v<sup>s</sup> xvij<sup>d</sup>

It'm for the ingrossinge of the in-  
dentures from the Cittie to Mr.  
Barker, and the letter of attur-  
ney to receive livery and seisin . . . . . v<sup>s</sup>

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Sm<sup>t</sup> totall bysyd the things  
whereof no particular sume  
is seutt downe . . . . . £38 10 4

M<sup>d</sup>.—That Mr. Stapleton is to  
paye xiiij<sup>l</sup> for the rent of his  
howse a litle Podingcorst, due at  
Mich. 1608, for one whole yere  
past.

(Indorsed)  
Mr. Stapleton's bill,  
1608.

## TRANSFER OF SHARES IN JOINT-STOCK COMPANIES.

To the Editor of the Legal Observer.

Sir,

I AGREE with your able correspondent "A Subscriber," that it was the intention of the legislature in passing railway acts "to secure the completion of the undertaking for the benefit of the public," as the preamble, which is generally the key to the construction of the act, declares.

I also agree that the object of the legislature cannot be attained by the transfer of shares to men of straw, but then it must be admitted "that the preamble cannot control the enacting part of a statute which is expressed in clear and unambiguous terms;" and what so clear as, "And be it further enacted, that it shall be lawful for the several proprietors of shares in the said undertaking, and their respective executors, administrators, and suc-



cessors, to sell and dispose of any shares to which they shall be entitled therein?"

The same argument as "A Subscriber's" was used in *The Huddersfield Canal Company v. Buckley*, 7 T. R. 36; the plaintiff's counsel said, "If it was competent for them (the proprietors) to throw the burden on others, the assignment might be made to beggars, and thus the legislature would be deceived, the owners of land through which the canal passes would be injured, and the public deprived of the benefit which the legislature intended they should derive from the undertaking."

To which Mr. Justice *Ashhurst* replied, and Lord *Kenyon* concurred, "There is no doubt respecting the principal question. The original subscribers have power to assign their shares to *whomsoever* they please. Then it would be strange to say that after disposing of their shares they should still continue liable to all the burdens which are thrown on the owners of the property."

It is clear that public companies are not governed with reference to the rules which restrain parties in ordinary cases from parting with their shares without each others' consent. 9 Bing 115. A CLERK.

#### LIST OF NEW PUBLICATIONS.

A copious and practical Treatise on the Game Laws; including all the Statutes in force, an Analysis of every Section—Practical Information, Law and Practice of Appeals against Surveyors' Charges, all the Cases and Decisions of the Judges down to the present time, Forms, &c. &c. By John Bell, A. M. of Lincoln's Inn, Barrister at Law. Price 7s. 6d. bds.

An Act to explain and amend the Acts for the Commutation of Tithes in England and Wales; with an Introduction, Notes, and Index. By Meadows White, Esq., Solicitor to the Tithe Commissioners for England and Wales. Price 2s.

Tithe Amendment Act, 2 & 3 Vict. c. 62, with Notes and Index. By G. H. Whalley, Esq., Barrister at Law. Price 2s. 6d.

#### MASTERS EXTRAORDINARY IN CHANCERY.

Kelsey, Edward Edmund Peach, Salisbury, Wilts. Sept. 3.

#### DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From 23rd August, to 20th September, 1839, both inclusive, with dates when gazetted.

Robins, Thomas, and Francis Eugenio Scoble Willesford, Tavistock, Attorneys and Solicitors. Aug. 23.

Scholes, N. W., and Thomas Neild. Sept. 20.

#### BANKRUPTCIES SUPERSEDED.

From 23rd August to 20th September, 1839, both inclusive, with dates when gazetted.

Smith, Thomas, Manor Row, Tower Hill, Earth-ware-man. Aug. 30.

Cart, Edward, Barton-upon-Humber, Lincoln, Starch and Whiting Manufacturer. Sept. 3.

#### BANKRUPTS.

From 23rd August to 20th September, 1839, both inclusive, with dates when gazetted.

Ashford, Charles, Cornhill, London, and of Windmill Street, Lambeth, and Wallingham, near Croydon, Surrey, Miller. *Whitmore*, Off. Ass.; *M'Leod & Co.*, London Street, Fenchurch Street. Aug. 23.

Anderton, John, Manchester, Tootal Bridge, and Ainsworth Hall, Lancaster, Calico Printer. *Abbott & Co.*, Charlotte Street, Bedford Square; *Bennett & Co.* Manchester. Aug. 23.

Appleton, William, Newton, Lancaster, Tailor and Draper. *Evans*, Liverpool; *Oliver*, Old Jewry. Sept. 10.

Arnett, James, Witney, Oxford, Grocer. *Heater*, Oxford; Messrs. *Baxter*, Lincoln's Inn Fields. Sept. 6.

Brinkworth, John, North Nibley, Gloucester, Clothier and Teazle Dealer. *Coe & Co.*, Pancras Lane, London; *Bishop*, Dursley. Aug. 23.

Beesley, Richard George, Manchester, Commission Merchant. *Abbott & Co.*, Charlotte Street, Bedford Square; Messrs. *Bennett*, Manchester. Aug. 23.

Brierley, Joshua, Shaw, in Crompton, Prestwich-cum-Oldham, Lancaster, Cotton Spinner and Waste Dealer. *Battye & Co.*, Chancery Lane; *Eastwood*, Tormorden. Aug. 30.

Bradford, Joseph Powell, jun., Liverpool, Spirit Merchant. *Wilton*, Gray's Inn Square; *Almes & Co.*, Leominster. Sept. 3.

Baker, John, and George Wallis, Edward Street, City Road, Farriers. *Alsager*, Off. Ass.; *Winter & Co.*, Bedford Row. Sept. 6.

Bishop, John George Roth, Liverpool, Cigar Manufacturer and Merchant. *Adlington & Co.*, Bedford Row; *Morris*, Manchester. Sept. 10.

Bauckham, George, and Sarah Bauckham, Gravesend, Kent, and of Barking, Essex, Boat Builders and Shipwrights. *Edwards*, Off. Ass.; *Stevens & Co.*, Little Saint Thomas Apostle. Sept. 20.

Chapman, George, Bath, Chinaman. *Pinniger & Co.*, Gray's Inn Square; *Dore*, Bath. Aug. 30.

Corry, George Ryall, Yeovil, Somerset, Glove Manufacturer. *Douglass & Co.*, Verulam Buildings, Gray's Inn; *Vining*, Yeovil. Sept. 6.

Connley, John, and John Evans, Nutsford Vale, near Longsight, near Manchester, Dyers and Printers. *Johnson & Co.*, Temple; *Hitchcock*, Manchester. Sept. 17.

Courtney, John, Brecon, Druggist and Milliner and Mercer. *Mardon*, Newgate Street; *Faghan & Co.*, Brecon. Sept. 20.

- Elstob, William, Houghton-le-Spring, Durham, Cabinet Maker and Upholsterer. *Nicholls & Co.*, Cook's Court, Lincoln's Inn; *Thompson*, Durham. Aug. 27.
- Edwards, Joseph, Manchester, Victualler. *Taylor & Co.*, Bedford Row; *Stainbank & Co.*, Manchester. Aug. 27.
- Edwards, William, Stank-hill-House, Budbrooke, Warwick, and also of Leamington Priors, in the same county, and Thomas Henry Blackburn Venour, of Leamington Priors, Scriveners. *Swain & Co.*, Old Jewry; *Whateley*, Birmingham. Sept. 6.
- Fagg, George Joseph, and George Alexander Frederick Steen, Manchester, Merchants. *Law*, Manchester; *Adlington & Co.*, Bedford Row. Aug. 30.
- Fox, Samuel, Manchester, Corn Dealer. *Back*, Chancery Lane; *Barratt*, jun., Manchester. Sept. 17.
- Grant, John, Wellington Street, Strand, Printer and Publisher. *Turgand*, Off. Ass.; *Stainland & Co.*, Bouverie Street, Fleet Street. Aug. 23.
- Herbert, William, King Street, Tower Hill, London, Ship Chandler. *Cannan*, Off. Ass.; *Tucker*, Bank Chambers, Lothbury. Aug. 23.
- Harvey, Henry, Hatton Garden, Merchant and Commission Agent. *Whitmore*, Off. Ass.; *Phillips*, Size Lane, Bucklersbury. Sept. 3.
- Higson, Henry, Bolton-le-Moors, Lancaster, Brewer. *Chilton & Co.*, Chancery Lane; *Hulton*, Bolton. Sept. 3.
- Hobson, Joseph Taylor, Liverpool, Merchant. *Chester*, Staple Inn; *Davenport & Co.*, Liverpool. Sept. 10.
- Hallett, Francis, Brighton, Sussex, Builder. *Attree & Co.*, Brighton; *Souton*, Great James Street, Bedford Row. Sept. 17.
- Jackson, Mallett Case, Old Trinity House, Water Lane, Thames Street, London, Corn and Wine Merchant. *Groom*, Off. Ass.; *Teague*, Crown Court, Cheapside. Sept. 13.
- Jones, Robert, of the Pavement, Moorfields, London, Linen Draper. *Alsager*, Off. Ass.; *Hardwick & Co.*, Cateaton Street. Sept. 13.
- Johnson, Robert, Bedlington, Durham, Shopkeeper. *Shield & Co.*, Queen Street, Cheapside; *Fenwick*, Newcastle-upon-Tyne. Sept. 20.
- Kearse, William, Belgrave Place, Walworth Road, Surrey, Tailor, (late of Cork, Ireland). *Turgand*, Off. Ass.; *Davies*, Leicester Square. Aug. 27.
- Knight, Kempster Hughes, Chichester, Victualler. *Souton*, Great James Street, Bedford Row. Aug. 30.
- Kay, William, Bolton-le-Moors, Lancaster, Draper. *Adlington & Co.*, Bedford Row; *Clays & Co.*, Manchester. Sept. 10.
- Lord, Alfred, Trinidad Place, Islington, Middlesex, Surgeon and Apothecary. *Whitmore*, Off. Ass.; *Smith*, Tokenhouse Yard, Lothbury. Aug. 27.
- Lawrence, Josiah, Bolingbroke Row, Walworth Road, Surrey, Watch and Clock Manufacturer. *Turgand*, Off. Ass.; *Spyer*, Broad Street Buildings. Aug. 27.
- Lewis, Henry, Salford, Manchester, Clothier and Woollen Draper. *Chew*, Manchester; *Rogerson*, Norfolk Street, Strand. Sept. 3.
- Long, George, Oakhampton, Devon, Linen Draper. Messrs. *Sole*, Aldermanbury; *Husband*, Devonport. Sept. 3.
- Long, Richard, Tavistock, Devon, Miller and Corn Merchant. *Surr*, Lombard Street; *Lockyer & Co.*, Plymouth. Sept. 10.
- Marston, William, Manchester, Yarn Merchant, Cork Merchant, and Cork Manufacturer. *Makinson & Co.*, Temple; *Atkinson & Co.*, Manchester. Aug. 23.
- Morrison, Joseph, Brandon Street, Walworth, Surrey, Fellmonger. *Cannan*, Off. Ass.; *Tucker*, Bank Chambers, Lothbury. Aug. 27.
- Mackenzie, Kenneth Francis Hislop, King's Arms Yard, Coleman Street, London, Merchant. *Whitmore*, Off. Ass.; *Tilsons & Co.*, Coleman Street. Aug. 30.
- M'Minn, Henry, and George M'Minn, Liverpool, Woollen Drapers, Silk Mercers, and Hosiers. *Avison & Co.*, Liverpool; *Adlington & Co.*, Bedford Row. Aug. 30.
- Morgan, James Williams, John Morgan, and Thomas Morgan, Glasbury, Radnor, Woolstaplers. *Gregory & Son*, Clement's Inn; *Williams*, Brecon. Aug. 30.
- Mitchell, Joseph, Preston, Lancaster, and of Liverpool, Woollen Draper, and Dealer in Hats. *Sale & Co.*, Manchester; Messrs. *Baxter*, Lincoln's Inn Fields. Aug. 30.
- Medlam, John, Bristol, Victualler and Cider Dealer. *Poole & Co.*, Gray's Inn Square; *Williams & Co.*, Bristol. Sept. 20.
- Nuttall, John, Manchester, Grocer. *Milne & Co.*, Temple; *Potter*, Manchester. Sept. 20.
- Ord, Jonathan William, Silver Street, Durham, Linen Draper. *Nicholls & Son*, Cook's Court, Lincoln's Inn; *Thompson*, Durham. Aug. 23.
- Orams, Edward, Stowmarket, Suffolk, Ironmonger. *Pownall & Co.*, Staple Inn, Holborn; *Hayward*, Needham Market. Sept. 10.
- Pattison, James Frederick, Finsbury Circus, London, Commission Agent and Stationer. *Turgand*, Off. Ass.; *Hall*, Barge Yard, Bucklersbury. Aug. 30.
- Preedy, William, Oxford, Grocer. *Amory*, Throgmorton Street. Sept. 6.
- Pickles, John, Manchester, Calico Dealer and Commission Agent. *Hadfield*, Manchester; *Johnson & Co.*, Temple. Sept. 10.
- Petrie, Peter, Liverpool, Shipwright and Ironfounder. *Chester*, Staple Inn; *Davenport & Co.*, Liverpool. Sept. 10.
- Potts, George, Manchester, Currier and Leather Dealer. *Milne & Co.*, Temple; *Venables*, Manchester. Sept. 20.
- Rawnsley, Samuel, Lidget Green, Bradford, York, Stuff Manufacturer. *Battye & Co.*, Chancery Lane; Messrs. *Lee*, Leeds. Sept. 3.
- Robinson, John, Shavington-cum-Gresty, Chester, Cheese Factor. *Pinniger & Co.*, Gray's Inn Square; *Warren & Co.*, Market Drayton, Salop. Sept. 6.
- Rabey, William, Redruth, Cornwall, Leatherseller and Ironmonger. *Clarke & Co.*, Bishopsgate Church Yard; *Stokes*, Truro. Sept. 6.

- Richards, Henry Harris, Devonport, Devon, Draper. *Fox*, Finsbury Circus; *Bridgman*, Tavistock. Sept. 13.
- Ramsey, Henry Peake, Devonport, Devon, Druggist. *Smith*, Chancery Lane; *Gilbard*, Devonport. Sept. 13.
- Scarlett, George, Wednesbury, Stafford, Carrier. *Bicknell*, Lincoln's Inn Fields; *Weaver*, Stafford. Aug. 27.
- Sweet, Mary, Taunton, Somerset, Innkeeper and Wine and Spirit Merchant. *Barker & Co.*, Mark Lane. Aug. 27.
- Slater, Leigh, Manchester, Cotton Spinner. *Johnson & Co.*, Temple; *Heron & Co.*, Manchester. Aug. 30.
- Stringfield, John, Bath, Fellmonger. *Bicknell*, Lincoln's Inn Fields; *Drake*, Bath. Aug. 30.
- Simpson, Robert, Embleton, Cumberland, Innkeeper. *Care*, Furnival's Inn; *Steel & Co.*, Cockermouth. Sept. 3.
- Smith, James, Leeds, York, Woollen Draper. *Wiglenworth & Co.*, Gray's Inn Square; *Smith*, Leeds. Sept. 3.
- Sutcliffe, Richard Horatio Nelson, Cobham Row, Clerkenwell, Brewer. *Aluager*, Off. Ass.; *Robinson*, Queen Street Place, Upper Thames Street. Sept. 13.
- Saville, Joseph, Oldham, and of Ashton-under-Lyne, Lancaster, Linen and Woollen Draper. *Norris & Co.*, Manchester; *Norris & Co.*, Bartlett's Buildings, Holborn. Sept. 17.
- Tratt, George, Charlton Street, Somers Town, Middlesex, Tailor and Draper. *Whitmore*, Off. Ass.; *Goddard & Co.*, Wood Street, Cheapside. Aug. 27.
- Tratt, Samuel, Manchester Street, King's Cross, Tailor and Draper. *Cannan*, Off. Ass.; *Goddard*, Wood Street, Cheapside. Aug. 27.
- Taylor, Thomas Rogers, Portsea, Southampton, Bill Broker and Scrivener. *Goodeve*, Raymond Buildings, Gray's Inn; *Minchin & Co.*, Portsea. Sept. 6.
- Thompson, John, Liverpool, Butcher and Cattle Dealer. *Vincent & Co.*, Temple; *Jones*, Liverpool. Sept. 10.
- Taylor, Peter, Chorley, Lancaster, Cotton Spinner. *Walmley & Co.*, Chancery Lane; *Bray*, Preston. Sept. 13.
- Tapscott, John, Minehead, Somerset, Baker. *White & Co.*, Bedford Row; *Bevan & Co.*, Bristol. Sept. 17.
- Wartnaby, Joseph, Adam's Court, Old Broad Street, London, and of Lee near Lewisham, Kent, Ship and Insurance Broker, Merchant, and Underwriter. *Cannan*, Off. Ass.; *Cotterell*, Throgmorton Street. Aug. 23.
- Wilson, John, Sheffield Park, Sheffield, York, Spring-knife Manufacturer and Victualler. *Ryalls*, Sheffield; *Rodgers*, Devonshire Square, Bishopsgate Street. Aug. 27.
- Williams, George Langridge, Portland Road, Mary-le-bone, Builder. *Edwards*, Off. Ass.; *Hudson*, Old Jewry. Sept. 6.
- Wrigley, Charles James, Doncaster, York, Chemist and Druggist. *Lever*, King's Road, Bedford Row; *Barker & Co.*, Huddersfield. Sept. 10.
- Wright, William, Cutler's Street, Houndsditch, London, and of Pounder's End, Middlesex, Clothes Dealer. *Edwards*, Off. Ass.; *Hobler*, Walbrook. Sept. 13.
- Welch, Walter, Norwich, Draper. *Palmer*, Great Yarmouth; *Swain & Co.*, Old Jewry. Sept. 13.
- Wilson, John, Kington, Hereford, Bookseller and Printer. *Hammond*, Furnival's Inn; *Banks*, Kington. Sept. 13.
- Whitaker, Abraham, Hulme, and also of Cross Lane, Salford, Manchester, Victualler. *Debinson*, Gray's Inn Square; *Prescott*, Manchester. Sept. 17.
- Wore, Friend, late of Hollinwood, near Manchester, but now of Hulme in the parish of Manchester, Commission Agent. *Spinks*, jun., John Street, Bedford Row; *Redfern*, Oldham. Sept. 17.
- Wilson, Joel, Heaton Norris, Lancaster, Corn Dealer. *Scott & Co.*, Lincoln's Inn Fields; *Copcock & Co.*, Stockport; *Norris*, Manchester. Sept. 17.
- Wotherspoon, Matthew, Liverpool, Share Broker. *Chester*, Staple Inn; *Davenport & Co.*, Liverpool. Sept. 17.
- Wilson, William, and Joseph Wilson, Boston, Lincoln, Linen Drapers. *Tuxford*, Boston; *Jones & Son*, Size Lane. Sept. 20.

## PRICES OF STOCKS.

Tuesday, 24th September, 1839.

3 per Cent. Consols Annuities	- - -	90½	a ½	a ½
New 3½ per Cent. Annuities	- - -	98½	a ½	a ½
Long Annuities, expire 5th Jan. 1860	- - -	147		
India Stock, div. 10½ per Cent.	- - - - -	248½		
Ditto Bonds, 3 per Cent.	- - - - -	6s. pm		
Bank Stock for Opening, 17th Oct.	- -	188	a 7½	
3 per Cent. Cons. for Acct., 15th Oct.	91½	a ½	a ½	
Exchequer Bills, 1000 <i>l.</i>	a 1½ <i>d.</i>			
	3 <i>s.</i>	a 5 <i>s.</i>	a 2 <i>s.</i>	a 4 <i>s.</i> pm.
Do. 500 <i>l.</i>	a 1½ <i>d.</i>	- 5 <i>s.</i>	a 6 <i>s.</i>	a 4 <i>s.</i> a 3 <i>s.</i> a 5 <i>s.</i> pm.
Do. Small, a 1½ <i>d.</i>	- -	4 <i>s.</i>	a 6 <i>s.</i>	a 3 <i>s.</i> a 6 <i>s.</i> pm.

# The Legal Observer.

SATURDAY, OCTOBER 5, 1839.

— " Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## THE PRACTICE OF RETAINERS.

WE have from time to time laid before our readers various cases and opinions on the practice relating to the Retainer of Counsel, and deem it useful to give, in a collected form, the substance of the information and suggestions we have collected. The only cases which have come before the Courts on this subject are the following:—*Earl Cholmondley v. Lord Clinton*, 19 Ves. 261; *Baylis v. Grout*, 2 Myl. & K. 316; *Ex parte Lloyd*, Montagu's B. C. 69.

### *Present Practice.*

A general retainer lasts for the joint lives of the client and counsel.

A general retainer applies only to the Court in which the counsel practises and his own circuit.

### *Suggested Alterations.*

A general retainer should entitle the party retaining to notice before a special retainer be accepted against him.

## SPECIAL RETAINERS.

### *At Common Law.*

A special retainer only terminates with the cause, but a doubt has lately been raised as to the client's right to the services of the counsel on motions before trial.

A retainer may be given before the commencement of an action.

And without entitling it in a Court.

### *In Equity.*

A retainer cannot be given until the bill or information is on the file.

If a brief be not delivered to the counsel retained, even on common motions, the retainer is considered as abandoned.

The party giving a special retainer ought to have notice before another retainer be accepted.

The retainer should not be considered as abandoned until a reasonable time after notice.

## SPECIAL RETAINERS FOR THE ASSIZES.

The retainer is for a particular assize and place.

If the venue be changed to another county, though on the same circuit, a fresh retainer is required.

The retainer should continue to the end of the suit.

Notice should be given in all cases where another retainer or brief is offered.

*Present Practice.*

If the cause be not tried at the first assizes, the retainer must be renewed for every subsequent assize until the cause is disposed of.

A retainer cannot be given for the summer assizes before the commission day of the spring assizes, without a retainer for the spring assizes also.

And the retainer should be renewed on or before the last day of the term next after each assizes.

*Suggested Alterations.*

The retainer should operate without reference to the venue, if the counsel belong to the circuit.

**MOTIONS.**

A special retainer in an action is understood to apply to the trial and not to the motions before trial.

A special retainer must be given for each motion.

A general retainer only will secure notice to the party of a retainer, or brief being offered on motions against him.

Notice should be given before a retainer from the opposite party be accepted.

**APPEALS.**

A special retainer will not be received until the appeal has been lodged. A general retainer must be given, in order to secure notice.

**ADVISING AND DRAWING PLEADINGS.**

Where counsel has advised on a lease or drawn pleadings, the party receives no notice in case a retainer is offered on the other side.

Notice should be given.

**FORM OF RETAINER.**

A general retainer given in the name of "the Mayor, Aldermen, and Burgesses" of a borough, does not extend to a case in which the mayor acted as a magistrate, and not officially as mayor.

If there be a variance between the title of the cause and the names stated in the retainer, a subsequent retainer in the right names will prevail.

When a retainer is given for the plaintiff in a cause *A. v. B.*, and an action is afterwards brought by *B. v. A.*, the counsel should not take the retainer of *B.* without notice to *A.*

**LIABILITY OF SOLICITORS ACTING AS EXECUTORS.**

THE office of executor being frequently accepted by solicitors, we deem it important to call their attention to such cases as shew their responsibility. It is a general opinion in the profession, founded, we believe, on no inconsiderable number of instances, that lawyers receive a harder measure of justice than any other suitors. Few attorneys, we believe, would willingly place themselves in the hands of a jury, where their opponents belonged to another class of the community, unless the

merits of the case were so clearly in their favour as to place the question beyond all possibility of doubt. Whatever prejudices a jury may entertain against lawyers, it might be presumed the Court would deal fairly, if not favourably towards them; but we incline to think that the Judges, perhaps unconsciously, shew a bias against the members of the profession, lest they should be suspected of partiality to their own order.

In the following case, which was noticed by the daily journals, (but the statement of which has now been prepared by our own reporter) it appears not improbable,

that because the defendant, (an executor,) happened to be a solicitor, the account in question, which had been long settled between the parties, was opened,—though the executor had the prudence not to act for himself, but through another solicitor; and though the opposite party, the tenant for life, had also employed a solicitor who knew, or ought to have known, all the facts on which his professional assistance was required. The other point in the case,—that of the construction of the will,—on which the executor followed the advice of the late Mr. Bell, appears to have turned on the assumption that some of the facts were not sufficiently brought to the notice of Mr. Bell. If so, the solicitor of the tenant for life should have pointed them out; but it is not likely that any material fact escaped the well-known skill and attention of Mr. Bell. We have added some notes by way of elucidating the points of the case; shewing, we think conclusively, that whatever difference of opinion there may be on the construction of the will, Mr. Pickering, the executor, did every thing which a prudent and honorable man could be required to do, although the Court has put a different construction on the will from that of Mr. Bell; and has set aside the agreement by which the accounts founded on that opinion were sought to be adjusted.

The summary of the decision is as follows:—

A testator gave his wife (subject to his debts, legacies, and legal liabilities), all the interest, rents, dividends, annual profits, use and enjoyment of all his real and personal estate for her life; and at her death he gave the residue of his real and personal estate to *A. B.*, subject as aforesaid, and to the payment of such sums of money as he had undertaken or should undertake to pay after his wife's decease. The wife received the rents and profits for thirty years, with the consent of *A. B.*, who was one of the executors: but then, on arrears of an annuity, before thought to be worthless, being unexpectedly recovered, in adjusting the interest of the parties as to such arrears, *A. B.* required the refunding of the excess of rent of the leasehold property, alleged to have been received by her, and being more than she was entitled to, and an account was settled between them on that presumption. Held, that the wife was entitled by the will to the income of the estate as left by the testator, and the account was set aside as being settled under the alleged ignorance of her rights under the will.

This was an appeal from a decree of the *Master of the Rolls* upon the following state of facts:—

Mr. George Andree by his will, dated December 1800, gave unto his wife all the interest, rents, dividends, annual profits, use and enjoyment of all his estate and effects whatsoever for her life, subject to the payment of his debts and legal liabilities, and to certain legacies thereby bequeathed: And he gave unto Edward Rowland Pickering (the son of his wife by a former husband) one hundred guineas, and all his papers and books, except as therein excepted, and all his furniture, fixtures and things in and about his chambers, in Staple Inn, with the appurtenances: And the testator gave his wife for her absolute use and benefit, all the rest of his furniture, wines, linen, china, and certain books; and the use of his plate and fixtures for her life. The testator then gave the said *E. R. Pickering* and his heirs all manors, messuages, lands, tenements and hereditaments, which were then vested in him (the testator) alone or jointly with any other person or persons as trustee, upon the same trusts as were subsisting respecting the same, and he appointed the said *E. R. Pickering*, *D. P. Watts*, and *L. Gibson*, executors of his said will, and he directed all the legacies given thereby to be paid without delay: And he gave and devised, after his wife's death, all the rest and residue of his estate and effects whatsoever unto the said *E. R. Pickering*, to hold to him, his heirs, executors, administrators, and assigns for ever, subject as aforesaid, and to the payment of such sum and sums of money as he had undertaken or should undertake to pay after his said wife's decease; but if the said *E. R. Pickering* should die in her lifetime, not having married, then the testator bequeathed one moiety of such residue between his nephew and niece. The testator, by a codicil to his will, charged an annuity of 60*l.*, payable by him to one John Cook for life, on certain freehold and copyholds lands to which he was or should become entitled, in Hertfordshire, on the life of John Clendon; and if the said *J. Clendon* died before Cook, the sum which might be received from his insurance of Clendon's life should be applied in paying such annuity to Cook. The testator died in February 1801, and the said *E. R. Pickering* alone proved the will. The testator's property at the time of his death consisted, among other things, of a leasehold house in the Strand, London, and an annuity of 100*l.* for the life of the grantor secured by the covenant of one William Ward. The affairs of the testator being at his death embarrassed, Mrs. Andree, the testator's widow, was allowed to receive the whole of the rents of the house in the Strand from the time of the testator's death down to the year 1830, with the consent of the executor. The annuity, in consequence of the insolvency of the grantor, and of the death of Ward the surety, before the death of the testator, was sixteen years in arrear even before the testator's death; but in the year 1827, a property having

devolved upon Ward the surety, the widow was apprised of this event, a bill was filed in her name and that of the executor, by Messrs. Johnson & Co., solicitors, against Edward Ward (the personal representative of W. Ward), and by a decree made in that suit in 1830, the arrears of the annuity, which then amounted to 4047*l.*, were ordered to be paid, and E. R. Pickering received the same in August 1830. As soon as he found that the arrear of the annuity was thus recoverable, he (being himself a solicitor) submitted a case to counsel, but being a family matter, and not thinking the real names to be of any consequence, it was in substance as follows:—

“George Andrews (instead of Andree) died in 1801, having by his will bequeathed to his wife, the rents, interest, dividends, and annual produce of his estate for her life, and, subject thereto, he bequeathed the residue of his estate real and personal, to Edward Parsons (instead of Pickering), his executors, administrators and assigns, for ever; and appointed three executors, who are all dead but one. Part of his property consisted of a lease for fifty years, from 1796, at a clear rent of 10*3l.* *The widow is still living, and has received the whole rents.* The residuary legatee now complains that the executors ought not to have suffered the widow to have received the full rents, but that they ought to have sold the lease at testator's death, realized the then value, and only to have let the widow have what interest could have been obtained from the produce; but they not doing so, he contends that he has been greatly injured.<sup>a</sup> He insists that if this lease had been sold at testator's death, it would have produced 1854*l.*, and that, if it were now sold, it would only be worth 1133*l.*, and therefore his property is worse by 721*l.* than it would have been had the executors sold this leasehold property, and realised the assets, as they ought to have done, at the testator's decease; and he insists that the deterioration should be made good by the widow, either by now making up the value as it would have been at the testator's death, or that the future rents should be stopped to make it good, or that it be made good out of the annuity mentioned on the other side. Be pleased to give your opinion on this leasehold question, and the rights of the parties.”

The case stated a second point for counsel's opinion thus:—“On G. Andrew's death in 1801, it was found that he had purchased an annuity of 100*l.* of the assignee of the grantee upon the grantor's life, and that W. Watts was a covenantor for securing it. W. Watts was dead, insolvent, as it then appeared, and upon application to the grantor, it was found that he could pay nothing; that only a small payment had been made to the first grantee, and that Andrews had not received any payment. The grantor died lately, and it has been found that W. Watts had become entitled to some

property. His representative has been called upon under the covenant, and it is expected that the whole or a considerable part of the arrears may be obtained. The whole arrears due are 4047*l.* 5*s.* 8*d.* The widow claims to be entitled to the annuity from the death of her husband, which, up to 1825, would be 2400*l.*, and to have the residue laid out at interest for her life. On the other hand, the residuary legatee insists that she is not entitled to any part of the arrears; that it never had been an annual productive property, and that not, until it is received by the executors, will it be that personal property out of which she can derive any interest; and that, therefore, all she is entitled to will be to have the gross sum, which may be obtained, laid out at interest to be paid to her for life in future. The executor has suggested that it should be considered thus: The arrears due at Mr. Andrews's death were 1647*l.*<sup>b</sup> The then residue of this annuity would have been 1100*l.* Both these sums together, *viz.* 2747*l.*, should be considered as the realised assets from the annuity in 1801. The widow should have the difference, *viz.* 1300*l.*, from which should be deducted the excess received by her from the leasehold. Both parties disagree to this arrangement. The widow thinking that she ought to have the 100*l.* per annum since the year 1801, as accrued arrears to her, and the residuary legatee insisting that she ought to have nothing of the arrears, but only the future interest of the gross sum of whatever may be obtained, and that the residuary legatee's claim in respect of the lease should be adjusted out of the widow's claim on the annuity. Be pleased to give your opinion upon this point, and what you recommend to be done between the parties.” Mr. Bell, to whom the points were submitted, gave his opinion on them as follows:

As to the first point, “I think *the leasehold should be considered as sold at the testator's death*, and the widow will be entitled to what it would have produced if then laid out in the 3 per cent. consols, and she must refund the rest of what she has received from the rent (*Howe v. Dartmouth*, 7 Ves. 137), *for this is a residuary bequest to the widow for life.*”

As to the second point.—“The arrears at the death of the testator must be *carried to the account of the residue*, and the widow can have no benefit from it *till it begins to produce interest*. As to the residue of the arrears, that is what the annuity has produced from the death of the testator; and according to *Howe v. Dartmouth*, it should be computed what the residue of the annuity in 3 per cent. consols would have produced if laid out at the death of the testator; and what the widow would have received from dividends of such stock should be paid to her out of what has accrued since his death, and the residue of that sum should be taken as part of the principal belonging to the residue. If the whole arrears are not recovered, I incline to think the sum

<sup>a</sup> It will be seen that these suppositious sums were used merely argumentatively to draw Mr. Bell's attention to the points.

<sup>b</sup> These figures were merely used by way of elucidation.

recovered must be apportioned rateably according to what would go to each account, if the whole had been recovered. John Bell, Lincoln's Inn, March 20th, 1830." E. R. Pickering, sent a copy of this opinion, and of the cases (omitting only the suppositious calculations of sums) to Mrs. Andree, with the following letter:—"With this I beg leave to send you the account, which has been drawn out agreeably to the opinion of Mr. Bell, respecting the house in the Strand, and the arrears of Greene's annuity, now recovered from Ward's estate. A copy of Mr. Bell's opinion accompanies the account, that you may put them both into Mr. Grojan's hands, or into those of any other professional man in whom you have confidence, that they may be carefully considered on your behalf. I must request that he will be pleased to see Mr. Johnson on the subject; and as soon as I learn that the amount has been adjusted and approved by you, the balance shall be paid." Mr. Grojan was named by him, as she had expressly stated that he had been consulted regarding the progress of the suit for recovery of the arrears of the annuity on her behalf, and having been known to her from his infancy, but he was not the solicitor employed in recovering the arrears of the annuity. Mr. Pickering retained Mr. Johnson to act for him, Mr. Johnson being well acquainted with all the circumstances of the testator's affairs, and with the particulars of the suit. An account was drawn out upon the principle suggested by Mr. Bell, as to the leasehold rents, and disposition of the arrears of the annuity; but to make an adjustment of the whole account, and to give the widow a larger balance sum, her life interest in the surplus of arrears, and that in the excess of rent (that no diminution of her income might be made), were respectively valued according to the tables for such valuations.<sup>c</sup>

Mr. Grojan, on the part of the widow, and Mr. Johnson on the part of Mr. Pickering, as proved by Mr. Johnson's evidence, discussed the account; and Mr. Grojan admitting that it was fairly and liberally stated (the widow being allowed 5 per cent. on the estimated values of the leaseholds and annuity, instead of interest on 3 per cent. consols): the following was the memorandum written under that account, with the following receipt annexed, viz.:—"Received this 7th October, 1830, of Edward Rowland Pickering, Esq. the sum of

<sup>c</sup> The following is the summary of the account stated:

	£	s.	d.
Leasehold rent per annum	3038	10	0
103 × 29½			
Value of lease at testator's death	2354	16	9
1596l. 10s.; at 5 per cent. allowed 79l. 16s. 6d. × 29½			
	683	13	3
Difference between 103 at 79l. 16s. 6d. per annum, 23l. 3s. 6d.	57	18	9
Value thereof on her life, 2½ years			
	£741	12	0

488l. 10s. 6d., being the balance of the account hereunto annexed, and in full for all claims and demands for or on account of the several sums, matters, and things therein stated, mentioned, or referred to, save and except only as to the rents of the house in the Strand therein mentioned, and which I am to receive as heretofore. (Signed) Mary Andree." Both this memorandum and receipt were proved to have been written by Mr. Grojan or his clerk. Mrs. Andree died in July, 1836, being then ninety-two, and having made a will only three weeks before her death, and appointed L. U. Pickering, the plaintiff, another son by her first husband, her executor, who instituted this suit against E. R. Pickering, to set aside the above mentioned account, and to take the opinion of the Court on Mr. Andree's will, and the rights of his widow, and of the residuary legatee under it. The Master of the Rolls, after a full hearing of the cause, held, that the widow was entitled for her life to the enjoyment of the whole of testator's estate as he left it at his death; and that the account ought to be set aside by reason of the widow's imperfect knowledge of her rights and the pressure of the opinion of counsel against her, founded on an imperfect statement of facts, it not being stated that the defendant was not only executor, but the residuary legatee,<sup>d</sup> in consequence of which she had been induced to sign the agreement at the foot of the account. From that decision the defendant now appealed.

The Solicitor General, Mr. Tinney, and Mr. Sharpe for the respondent, supported the decree.—The opinion of Mr. Bell was the ground-work of the account and agreement, but that opinion was founded on an imperfect statement of facts, and was consequently erroneous. No reliance could therefore be placed on that opinion, although it formed the ground-work of the whole of the settlement which had been

Supposed value of annuity on life of annuitant, then aged 64, at the testator's death, 800l.; at 5 per cent. 40l. Annuitant died in 1825 or 1826, but not received until 1830, 40 × 24	960	0	0
Arrears received .... £4047 5 8			
Deduct the above ....	960	0	0
	£3087	5	8

Value of her life interest in that balance if laid out in 1830 in 3 per cents., 108l. 1s. 0d. × 2½	270	2	6
	1230	2	6
Deduct the above .....	741	12	0
Balance paid to the widow .....	£488	10	6

<sup>d</sup> The case stated that the widow had received all the rents from the testator's decease: she knew also that the defendant was executor and residuary legatee, and so did Mr. Grojan, her solicitor; and she could not have received the rents without the acquiescence of the defendant.



effected between the defendant, a man in possession of his faculties, and his mother, a lady of eighty-six years of age, and, as she said herself, so lightheaded that she could not comprehend accounts. No blame could attach to Mr. Grojan or Mr. Johnson, the professional gentlemen employed, for they proceeded on the opinion of Mr. Bell; but it was clear that a settlement of such a nature could not stand when it was known that Mr. Bell had no knowledge of the twenty-nine years acquiescence on the part of the defendant,<sup>e</sup> or of his being himself residuary legatee and executor. If, however, contrary to their expectation, the Court should come to the conclusion that the opinion of the Master of the Rolls with respect to the will was an erroneous one, still, the learned counsel submitted, that the account drawn up by the defendant must be opened, as it was clearly founded on a wrong basis, and contained miscalculations to the extent of many hundred pounds.

Mr. Wigram, Mr. Richards, and Mr. Lloyd were for E. R. Pickering, the appellant.—They contended that as no fraud of any kind was imputed to Mr. Pickering, and that, as Mrs. Andree had for six years acquiesced in the settlement of the account, it ought not to be set aside or opened now at the suit of the plaintiff, another son of Mrs. Andree, and who was living in the same house with her both before and after the settlement, and was well acquainted with the circumstances. They also contended that the settlement was a fair and just one, and that Mrs. Andree herself, a woman of strong mind, had been assisted by a professional adviser of her own selection and of great acuteness. The following cases were cited in the arguments: *Pullen v. Ready*;<sup>f</sup> *Sittrell v. Barnard*;<sup>g</sup> *Howe v. Dartmouth*;<sup>h</sup> *Alcock v. Slopers*;<sup>i</sup> *Collins v. Collins*;<sup>j</sup> *Clifton v. Cockburn*;<sup>k</sup> *Bethune v. Kennedy*;<sup>l</sup> and *Mills v. Mills*.<sup>m</sup>

The Lord Chancellor in giving his judgment, after taking time to consider, said, that in his opinion, the whole of the case had been fairly set forth in the plaintiff's bill. The question respecting the settlement of accounts between Mr. Pickering and his mother, was one on which he had expressed himself strongly in the course of the argument. That settlement was one which could not be sustained. It was a settlement proposed by a solicitor to his mother, a lady of eighty-six years of age; and it professed to be founded on an opinion given by Mr. Bell, which opinion it has been made to appear, was not given on an inspection of the will, but on a case laid before that learned counsel by Mr. Pickering. It was said indeed that Mrs. Andree had the benefit of good legal advice, and that the negotiations previous to the settlement were conducted on her part by a solicitor, Mr. Grojan, who was a friend of the

family. There was, however, no evidence that Mr. Grojan had his attention drawn to the particular circumstances of the case, or that he knew the extent of Mrs. Andree's rights, or the manner in which the opinion of Mr. Bell had been obtained.<sup>n</sup> The evidence of Mr. Johnson the solicitor for the appellant, in no part of it shewed that this was an agreement or contract. That evidence did not much assist the cause of the appellant. The case must be looked at as if the contract had not taken place, and that restored it to the construction of the will. The agreement took place 29 or 30 years after the testator's death. The son was executor—The mother was tenant for life. The property, so far as it was affected by the question raised in this case, was a leasehold house and an annuity, which last was considered a hopeless claim. The mother had received the rent of the leasehold house from 1801 to 1830, and the son now contended that she ought not to have received the rents of the house which was perishable property, without adverting to the lapse of time after which he made the claim. The question turned upon the construction of the will. The cases on the subject were numerous, some in favour of the tenant for life, and some in favor of the remainder-man. There might necessarily be great ambiguity in the terms of the particular will, but the principle was plain and obvious. The principle was laid down clearly in *Howe v. Lord Dartmouth*, but the principle was acknowledged before that case was decided. If the testator gives property, specifically for life, and in remainder, the Court cannot avoid seeing that it is given in specie. If he gives leaseholds to A. for life, with remainder to B., the intention and declaration thereof is the other way. These cases are relieved from difficulty. The case of *Collins v. Collins* is the nearest case to the present, of all those referred to. In *Alcock v. Slopers*, the Master of the Rolls saw there was a sufficient indication that the wife should enjoy the bequest in specie. There were in the case of *Collins v. Collins*, expressions only applicable to the species of property there mentioned. There was a direction that at the wife's death the property should be divided, &c. His Lordship read the words, and said he concurred in the decision in *Collins v. Collins*. He thought it impossible, that a testator should not wish his wife to enjoy the property in the state in which he left it, should he use the expressions in *Collins v. Collins*. The expressions in this will "plate and pictures," fell under the words "use and enjoyment of all my property." The testator had not given the rest and residue in these terms before. There was to be no rest and residue till the decease of his wife.<sup>o</sup> It was necessary to look to the

<sup>n</sup> It was proved that Mr. Johnson and Mr. Grojan met several times and discussed the account.

<sup>o</sup> But see *Mills v. Mills*. The testator by the codicil, expressly points out wherein he would have the principle diminished by life application. And the residue was at his wife's decease, to be liable to such sums as he had

<sup>e</sup> The case seems to shew this fact clearly enough.

<sup>f</sup> 2 Atk. 591.

<sup>g</sup> 6 Ves. 520.

<sup>h</sup> 7 Ves. 137.

<sup>i</sup> 2 Myl. & K. 699.

<sup>j</sup> 2 Myl. & K. 703.

<sup>k</sup> 3 Myl. & K. 76.

<sup>l</sup> 1 Myl. & C. 114.

<sup>m</sup> 7 Simons, 504.

period at which the gift was to take effect, in order to find the meaning of the word "residue." To make out what was intended for the residue, it was necessary to make it out at the testator's death; for the direction brought it precisely parallel to *Collins v. Collins*. There was an annuity which the testator was obliged to pay, and also an annuity which he was entitled to receive. He made an account of what he had received from the insurance company. You cannot hinder the estate of the tenant for life from being subject to what the testator was liable to pay; the rents were subject to debts, and such insurances and liabilities as he was liable to pay. There might be annuities to eat up all the life estate. There was also an annuity for many years unpaid. His Lordship read the material parts of the will and codicils, and said he was clearly of opinion, that the principle of the case of *Howe v. Lord Dartmouth* did not apply to them. He thought there was an intention sufficiently apparent in this will that the property given to the tenant for life should be enjoyed by her in the condition in which it was at the testator's death. Injustice would be done by applying to this case the principle of *Howe v. Lord Dartmouth*. There was certainly some ambiguity in the language of the will, but, on the whole, upon a careful examination, his Lordship came to the same conclusion on the will that the Master of the Rolls had come. In the various modes suggested by Mr. Bell, there was one mode which is obviously a mode that could not do justice between the parties. The scheme of an agreement which is called an account, suggested another, which is palpably unjust, and nothing could be much more difficult than to suggest any thing like that which would be just. But the only way in which any thing like justice could be attained, would be to take the facts as they ultimately turned out, and see "what would have been the value of a sum of money, the payment of which was postponed for thirty years, because that was the utmost to which the remainder man at the time of the death, would be entitled. If it had been converted at all, it would have been convertible only as a property now to be sold, but payable 30 years hence, it would resolve into nothing." <sup>p</sup>

undertaken or should undertake to pay at her decease. How were such undertakings to be paid, if the wife exhausted, as she nearly did, the leasehold property, by outliving the term? The testator could scarcely have contemplated giving to his widow twenty-four years of arrears of annuity at a remote period.

<sup>p</sup> This view of the case appears to be erroneous, from the following calculation:—4000*l.* not to be received even for thirty-five years hence, is now worth at 4 per cent. 1000*l.* Every sum at 4 per cent., multiplies itself in seventeen and a half years. So that 1000*l.* now paid, will, in seventeen and a half years, be 2000*l.*, and that 2000*l.* in seventeen and a half years more, will be 4000*l.* The value of 1*l.* at the present period, and not to be received until the end of thirty years, is worth, at 4 per cent.,

Then as to the conduct of the parties: he thought that after an acquiescence for near thirty years on the part of Mr. E. R. Pickering, he could not make a case to disturb the long enjoyment by his mother.<sup>q</sup> With respect to the costs—in ordinary cases, where the language used by the testator was so obscure that the parties interested had to come to this Court for its assistance in clearing it up, the practice was to throw the costs on the estate of the testator. But in this instance the object of the appeal was not so much to remove the ambiguity of the will, or to get the opinion of the Court on its construction, as to seek to set up the account which the decrees of the Master of the Rolls set aside. Under these circumstances, his Lordship felt it his duty to affirm the decree, and dismiss the appeal with costs.

*Pickering v. Pickering*.—Sittings at Lincoln's Inn, July 1839.

3083—or 6*s.* 2*d.* Therefore 4000*l.*, to be received at the end of thirty years, is worth now in present money 1233*l.* 6*s.* 8*d.*

Mr. Bell's principle has not been understood in respect to the division of the arrears of an annuity wherein the tenant is not tenant of the property in specie.

If the tenant for life and remainder-man sell the annuity, the transaction is simple enough; the product is laid out, and the tenant for life receives the dividends for life; but suppose they agree to keep it and take their chance of the life on which the annuity rests? Then the principle is equally simple. Value the annuity of 100*l.*, say 800*l.*, suppose that laid out at interest, say, 800*l.* at 5 per cent.; give the life tenant 40*l.*, and lay out the 60*l.* at interest, which the tenant for life will also receive; and so on every year, when and as the 100*l.* is received, so give the tenant for life the 40*l.*, and invest the 60*l.* from time to time as long as the annuitant and tenant for life live.

It is quite clear that this division can only be made when and as the annuity is received; and if it is not received for many years, it cannot be divided and invested until it is received, and of course cannot be so divided and invested after the annuity ceases; but if the annuity cease in the lifetime of the tenant for life, of course her 40*l.* share must cease, but she would continue to receive the interest of the accumulations of the 60*l.*, as long as she lived, be they what they may. And upon that principle was the account stated.

<sup>q</sup> It appears clear that the executor had no intention to disturb the receipt of the rent, had not the arrears of the annuity afforded the opportunity of its being done without any inconvenience to the tenant for life; and this was resorted to as a mere act of duty to his own large family—instead of the money going into another channel for which it was evidently not intended. It appears never to have occurred to any of the professional persons that Mrs. Andree could be construed as tenant for life *in specie*; and it is understood that none of the counsel even now so construe the will. Ed.

## CHANGES IN THE LAW

IN THE LATE SESSION OF PARLIAMENT.

No. XI.

## METROPOLITAN POLICE COURTS.

2 &amp; 3 Vict., c. 71.

[Continued from p. 405.]

11. *Her Majesty may direct an issue from the consolidated fund towards the expences of this act.*—And be it enacted, that it shall be lawful for her Majesty to direct that such sum not exceeding in any one year the sum of fifty thousand pounds, over and above the necessary disbursements, for purchasing, hiring, repairing, fitting-up, and furnishing the houses and buildings wherein the said police courts shall be holden, and for defraying the retiring allowances of such magistrates as may resign or be superseded under the provision herein-before contained, shall be issued quarterly out of the Consolidated Fund of Great Britain and Ireland to the said receiver, to be by him applied towards defraying the salaries of the magistrates, receiver, clerks, and other officers of the said police courts, and all expences of holding the said courts and putting this act in execution.

12. *Time of attendance of magistrates.*—And be it enacted, that on every day, excepting Sundays, Christmas Day, Good Friday, or any day appointed for a public fast or thanksgiving, one of the said magistrates shall attend at each of the police courts established or to be established within the Metropolitan Police District, from ten of the clock in the morning until five of the clock in the afternoon: and every such magistrate shall attend at such other times as urgent necessity may require, or shall be directed by one of her Majesty's principal secretaries of state; and the secretary of state shall have power from time to time to direct at which court each of the said magistrates shall attend.

13. *Acts directed to be done by a neighbouring justice may be done by any of the said magistrates.*—And be it enacted, that where by any law now in being, or by any act not containing an express enactment to the contrary hereafter to be made, any act is directed or authorized to be done by any justice or justices of the peace belonging to any of the said offices, or by any justice or justices residing in or near or next the parish or place where any offence or other matter cognizable before him or them shall be committed or shall arise, the same jurisdiction may be exercised by one of the said magistrates in any of the said courts.

14. *One magistrate may do any act directed to be done by more than one justice, except at petty sessions.*—And be it enacted, that it shall be lawful for any one of the said magistrates appointed or hereafter to be appointed to do alone any act at any of the said courts, or at any place where her Majesty shall order any such court to be holden within the limits of the Metropolitan Police District for the time being, which by any law now in force, or by any law not containing an express enactment to the contrary hereafter to be made, is or shall be

directed to be done by more than one justice: Provided always, that none of the said magistrates shall be competent to act as a justice of the peace, either alone or with any other justice or justices, in any thing which is to be done at a special or petty session of all the justices acting in the division, or by the justices of any of the said counties or liberties in quarter session assembled.

15. *Magistrates to meet quarterly for reporting to the Secretary of State.*—And be it enacted, that the said magistrates, or so many as may be able to attend, shall meet together once in every quarter of a year at such time and place as one of her Majesty's Principal Secretaries of State shall appoint; and the chief magistrate shall preside at the said meetings, or in his absence such one of the said magistrates shall preside as shall be chosen by the magistrates then present; and every one of the magistrates belonging to the said police courts shall furnish for the use of such meeting a report of his proceedings in the execution of this act, and each of the said magistrates, and also the commissioners of the police of the metropolis, shall furnish a report of any matters relating to the execution of this act, or to the police of the metropolis, which they shall be desirous of bringing under the notice of the magistrates assembled at such meeting; and the magistrates so assembled shall take every such report into consideration; and an abstract shall be made, under the direction of the magistrates, of all the said reports, and also a report of any matters which they, or the majority of them assembled at any such meeting, shall be desirous of bringing under the notice of the Secretary of State; and the said meeting may be adjourned from time to time for the purpose of considering the said report; and the abstract and report, when made, shall be delivered to one of her Majesty's principal Secretaries of State.

16. *Secretary of State may make rules for conducting the business of the courts.*—And be it enacted, that the Secretary of State may make such rules for regulating the manner of conducting the business in the said courts, and for securing uniformity therein, as shall appear to him fit to be made; and a copy of every rule made for enforcing any such regulation, signed by the Secretary of State, shall be sent to each of the said magistrates, and to the chief clerk of each of the said courts; and every rule made for such purpose as aforesaid shall be observed by the magistrates, clerks, and officers of the said courts; and a copy of all such rules shall be laid before both Houses of Parliament within six weeks next after the commencement of each session of parliament.

17. *Process in respect of matters arising within the Metropolitan Police District need not be endorsed.*—And be it enacted, that every warrant to compel the appearance of any person, or warrant for the apprehension of any person charged with any offence, issued by any of the said magistrates, in respect of any matter arising within the Metropolitan Police District, may be served or executed out of the Metro-

politan Police District by the constable or constables to whom the same shall be directed, and shall have the same force and effect as if the same had been originally issued or subsequently endorsed by a justice or justices of the peace having jurisdiction in the place where the same shall be served or executed.

18. *Summons for persons to appear at any place without the limits specified in this act, void.*—And be it enacted, that every summons or warrant which after the passing of this act shall be issued by any justice of the peace of the counties of Middlesex, Surrey, Kent, Essex, or Hertfordshire respectively, requiring any person residing within the Metropolitan Police District to appear at any place without the said district to answer any information or complaint touching any matter arising within the said district, shall be utterly void, except for the purpose of enforcing payment of any rates or taxes levied within any parish or place part only of which is within the Metropolitan Police District.

19. *Magistrates may proceed by summons, and if party summoned does not appear, may issue warrant.*—And be it enacted, that upon any information or complaint to be laid or made before any magistrate of the said Courts of any matter which such magistrate is authorized to hear and determine summarily, the magistrate may summon the party charged, and if such party shall not appear according to the tenor of the summons, any one of the said magistrates, upon proof of the service of the summons, may proceed, in all cases which are not of a criminal nature, if no sufficient cause shall be shown for the nonappearance of the party, to hear and determine the case in the absence of the party, and in all criminal cases shall issue his warrant for apprehending and bringing such party before him, or some other magistrate, in order that the said information or complaint may be heard and determined.

20. *How summons may be served.*—And be it enacted, that every such summons may be served by delivering a copy of the summons to the party, or by delivering a copy of the summons to the wife or servant or some adult inmate of the family of the party at his usual place of abode, and explaining the purport thereof to such wife, servant, or inmate.

21. *Warrant for apprehension may be issued without summons.*—And be it enacted, that every such magistrate may, without issuing any summons, forthwith issue his warrant for the apprehension of any person charged with any offence cognizable before him whenever good grounds for so doing shall be stated on oath before him.

22. *Magistrates may enforce attendance of witnesses.*—And be it enacted, that any such magistrate may summon any witness to appear and give evidence before him upon the matter of any offence cognizable before such magistrate with which any person shall be charged before him, at a time and place appointed for hearing the information or complaint, and by warrant under his hand and seal may require any person to be brought before him who shall

neglect or refuse to appear to give evidence at the time and place appointed in such summons, proof upon oath being first given of personal service of the summons upon the person against whom such warrant shall be granted; and such magistrate may commit any person coming or brought before him, who shall refuse to give evidence, to any house of correction within the Metropolitan Police District, there to remain without bail or mainprize for any time not exceeding fourteen days, or until such person shall sooner submit himself to be examined; and in case of such submission the order of any such magistrate shall be a sufficient warrant for the discharge of such person.

23. *Punishment of persons giving false evidence.*—And be it enacted, that every person who, upon any examination upon oath or affirmation before any magistrate acting at any one of the said Courts, shall wilfully and corruptly give false evidence, or shall wilfully and corruptly swear or affirm any thing which shall be false, shall be liable to the penalties of wilful and corrupt perjury.

24. *Persons suspected of having or conveying stolen goods.*—And be it enacted, that every person who shall be brought before any of the said magistrates charged with having in his possession or conveying in any manner any thing which may be reasonably suspected of being stolen or unlawfully obtained, and who shall not give an account to the satisfaction of such magistrate how he came by the same, shall be deemed guilty of a misdemeanor, and shall be liable to a penalty of not more than five pounds, or, in the discretion of the magistrate, may be imprisoned in any gaol or house of correction within the Metropolitan Police District, with or without hard labour, for any time not exceeding two calendar months.

25. *In case of information given that there is reasonable cause for suspecting that any goods have been unlawfully obtained and are concealed.*—And be it enacted, that if information shall be given on oath to any of the said magistrates that there is reasonable cause for suspecting that any thing stolen or unlawfully obtained is concealed or lodged in any dwelling house or any other place, it shall be lawful for such magistrate, by special warrant under his hand directed to any constable, to cause every such dwelling house or other place to be entered and searched at any time of the day, or by night if power for that purpose be given by such warrant; and the said magistrate, if it shall appear to him necessary, may empower such constable, with such assistance as may be found necessary, such constable having previously made known such his authority, to use force for the effecting of such entry, whether by breaking open doors or otherwise, and if upon search thereupon made any such thing shall be found, then to convey the same before a magistrate, or to guard the same on the spot until the offenders are taken before a magistrate, or otherwise dispose thereof in some place of safety, and moreover to take into custody and carry before the said magistrate every person found in such house or place who shall appear

to have been privy to the deposit of any such thing, knowing or having reasonable cause to suspect the same to have been stolen or otherwise unlawfully obtained.

26. *Party from whom stolen goods are received to be examined by the magistrate.*—And be it enacted, that when any person shall be brought before any such magistrate charged with having or conveying any thing stolen or unlawfully obtained, and shall declare that he received the same from some other person, or that he was employed as a carrier, agent, or servant to convey the same for some other person, such magistrate is hereby authorized and required to cause every such person, and also, if necessary, every former or pretended purchaser, or other person through whose possession the same shall have passed, to be brought before him and examined, and to examine witnesses upon oath touching the same; and if it shall appear to such magistrate that any person shall have had possession of such thing, and had reasonable cause to believe the same to have been stolen or unlawfully obtained, every such person shall be deemed guilty of a misdemeanor, and to have had possession of such thing at the time and place when and where the same shall have been found or seized; and the possession of a carrier, agent, or servant shall be deemed to be the possession of the person who shall have employed such other person to convey the same, and shall be liable to a penalty of not more than five pounds, or, in the discretion of the magistrate, may be imprisoned in any gaol or house of correction within the Metropolitan Police District, with or without hard labour, for any time not exceeding three calendar months.

27. *Power to order delivery of goods stolen or fraudulently obtained, and in possession of brokers and other dealers in second-hand property.*—And be it enacted, that if any goods shall be stolen or unlawfully obtained from any person, or, being lawfully obtained, shall be unlawfully deposited, pawned, pledged, sold, or exchanged, and complaint shall be made thereof to any of the said magistrates, and that such goods are in the possession of any broker, dealer in marine stores, or other dealer in second-hand property, or of any person who shall have advanced money upon the credit of such goods, within the Metropolitan Police District, it shall be lawful for such magistrate to issue a summons or warrant for the appearance of such broker or dealer, and for the production of the goods, and to order such goods to be delivered up to the owner thereof, either without any payment, or upon payment of such sum and at such a time as the magistrate shall think fit; and every broker or dealer who, being so ordered, shall refuse or neglect to deliver up the goods, or who shall dispose of or make away with the same after notice that such goods were stolen or unlawfully obtained as aforesaid, shall forfeit to the owner of the goods the full value thereof, to be determined by the magistrate: Provided always, that no such order shall bar any such broker or dealer from recovering possession of such goods by

suit or action at law from the person into whose possession they may come by virtue of the magistrate's order, so that such action be commenced within six calendar months next after such order shall be made.

28. *For removing doubts as to ordering the restoration of property unlawfully pawned, &c.*—And whereas doubts have arisen whether goods unlawfully deposited, pledged, pawned, or exchanged, may be restored to the owner in cases of summary conviction, or where the goods are produced without the issue of any search warrant; be it declared and enacted, that it shall be lawful for any magistrate to order that any goods unlawfully pawned, pledged, or exchanged which shall be brought before him, and the ownership of which shall be established to the satisfaction of such magistrate, shall be delivered up to the owner by the party with whom they were so unlawfully pawned, pledged, or exchanged, either without compensation, or with such compensation to the party in question as the magistrate may think fit.

29. *Power to order delivery of possession of goods charged to have been stolen or fraudulently obtained, and in custody of constable.*—And be it enacted, that if any goods or money charged to be stolen or fraudulently obtained shall be in the custody of any constable by virtue of any warrant of a justice, or in prosecution of any charge of felony or misdemeanor in regard to the obtaining thereof, and the person charged with stealing or obtaining possession as aforesaid shall not be found, or shall have been summarily convicted or discharged, or shall have been tried and acquitted, or if such person shall have been tried and found guilty, but the property so in custody shall not have been included in any indictment upon which he shall have been found guilty, it shall be lawful for any magistrate to make an order for the delivery of such goods or money to the party who shall appear to be the rightful owner thereof, or in case the owner cannot be ascertained, then to make such order with respect to such goods or money as to such magistrate shall seem meet: Provided always, that no such order shall be any bar to the right of any person or persons to sue the party to whom such goods or money shall be delivered, and to recover such goods or money from him by action at law, so that such action shall be commenced within six calendar months next after such order shall be made.

30. *Unclaimed stolen goods delivered to the receiver may be sold after twelve months.*—And be it enacted, that when any goods or money charged to be stolen or unlawfully obtained, and of which the owner shall be unknown, shall be ordered by any magistrate to be delivered to the receiver of the Metropolitan Police Force, it shall be lawful for the receiver, after the expiration of twelve calendar months, during which no owner shall have appeared to claim the same, to sell or dispose of such goods or money for the benefit of the Superannuation Fund of the Police of the Metropolis.

[To be continued.]

## LEGAL EXAMINATION DISTINCTIONS.

*To the Editor of the Legal Observer.*

Sir,

I AM sure your readiness to hear both sides of any question which has been noticed in your Journal, your wish to give publicity to any thing immediately affecting the profession, and your having already inserted letters on this subject, will be reasons for your making known my opinion.

I had intended being silent on this subject, did I not see that more letters were inserted on one side than on the other; and this I would account for, by the want of opinions being expressed, rather than an objection by you to the insertion of any opinion which has been forwarded to you.

And, whilst I range myself on the side of those who object to the distinctions being made, I must altogether avow myself an ever earnest advocate for a fair, honourable, and strict ordeal, at which the merits of candidates for examination may be tried.

The reason I object to the proposed alteration being made, is, that the result will not be a *fair criterion* of the merits of the youth. The names of those few, who from the proposed poll are to be placed in the general paper, will go out to the world as the ten or twelve most talented or clever men of the whole; whereas in point of fact they will not be *fairly represented*; they have not all received an *equal legal education*, and therefore should not be examined on a system only applicable to students who are educated in a uniform manner, and with equal advantages.

Some of the hundred students who are at one time examined, have been brought up in a country office, without having seen the progress of one common law action; others again have been articled in town, where the greater part of their time has been employed in attending most tiresomely and minutely to every stage of many actions; and who have never had the opportunity of watching the progress of an Equity suit, or the working of a Commission in Bankruptcy; whilst others who have been with gentlemen practising Criminal Law, have a superior practical knowledge in that branch to those who never went into the Old Bailey in their life; and others again may have been in an office where much leisure may find many opportunities for reading, which golden opportunity is not allowed to many who are in an office with much constant business to attend to, and who have their whole time occupied in the practical part of the profession.

This then forms my objection to the scheme, and while I agree to many propositions that have been urged, such as "that emulation is a most powerful motive to exertion: that this feeling is possessed by the great majority of mankind; that attorneys should be thoroughly qualified; and that their qualifications should be properly and impartially tested;" yet, I cannot admit that the proposed plan is the only means of accomplishing "the consummation so devoutly to be wished."

Is it then asked, "how is emulation to be excited?" "How are students to be urged on to the thorough knowledge of their profession?" I would answer in the first place, that any man of education, entering the noble, the difficult, the honourable profession of the law, must be, of necessity almost, sufficiently earnest and emulous to gain the path which will lead him thither, and once being in, the goal will be the more eagerly sought after. Every day will add to his stock of knowledge, until at last the crowning of his wishes,—of his highest hopes, will be achieved. But this is not all, for on the way, there is an exciting criterion, a test of his ability to be passed, the nearing of which will be an increased exertion, a greater exciting stimulus to help him on. The Examination! that, which now is conducted on a fair, impartial, and correct principle, which will let pass those only who are qualified, and quietly reject those who are not as yet prepared to proceed further.

This plan is now sought to be altered and remodelled upon a principle which sounds well to some men, because it is that which is in use at Colleges, but let the "Country Solicitor,"—who proposes the adoption of that, to collegians a fair ordeal,—let him remember that there, at Oxford and Cambridge, the men who are so classed have all been *equally trained*; all have received the same advantages of a quiet seclusion, so appropriate, so helpful to deep meditation and to study; those men have all the same means of obtaining a theoretical knowledge of a subject on which they are theoretically examined; whilst we, students of the law, are differently placed. The questions at our Examinations are both practical and theoretical upon every branch of the profession; and our knowledge is acquired, either from reading or from practice in all or some only of its branches.

These, my remarks, will, I trust, have some little weight with the Examiners in the determination at which they will arrive; and the "agreeable notice in an inferior list," will not be made of one,—who, though more fitted by a stock of general knowledge—more qualified to practise almost exclusively either Common Law, Conveyancing, or Chancery, (as, be it remembered, many solicitors are in the habit of so exclusively practising).—more thoroughly grounded in one or more branches of the law, and more eminently qualified in a thousand different ways, to be a solicitor—is yet proposed to be "agreeably noticed in an inferior list," while a fellow-student is "worthily distinguished in a more honourable class," from the fact of his either having been to a gentleman who, for five or ten guineas will educate a student "in a few weeks to pass at his Examination," or from the superior advantages which he has enjoyed in being in an office where every branch of the profession is practised, or with the still greater advantage of having been articled to some gentleman whose kindness and duty has induced him to take great pains with, and interest in, his education.

Upon reflection, I feel sure the Examiners

will persevere in the present mode, (which, be it remembered, is a sufficiently strict Examination to prevent any, without a competent knowledge, from being admitted,) and not travel out of the beaten road to chimerical unknown plans, merely because some "Country Solicitor," some few "Aspirants," led away with the charm of novelty, or the love of making innovations upon well formed plans, for the mere purpose of change seek for a change. And if the students are asked their opinion upon the subject, I feel equally sure that the right-judging ones will object, for the reasons I have urged, and we shall all say—

—"We seek no change at all,  
But least of all, such change as *this* would bring."  
W. J. M.

To the Editor of the *Legal Observer*.

Sir,

I HAVE observed with much satisfaction the recent renewal of the question of legal distinctions. As the subject is one about which, in my opinion, there can be no reasonable doubt, I am convinced that all that is needed to secure its ultimate adoption is publicity. The plan recommended by a Country Solicitor has, speaking generally, all the requisite elements. It needs neither extra expense nor additional machinery, while it allows full scope to the principle on which it is founded. It is, I think, preferable to that system which proposed to give prizes, though perhaps it would itself receive further simplicity, if instead of several papers the successful candidates were alone comprised in one.

I quite agree in his remark, that the alteration is one which the examiners should originate for the profession, if they consider it beneficial. Depend upon it that if we are to wait for a general agitation by the great body of attorneys, we shall wait in vain. However favourable they may be, and doubtless are, to a plan which offers to their children and offices a chance of distinction, with little trouble on their own part, they are too deeply engaged in pressing and immediate matters, to give the subject more than a cursory consideration, still more a lengthened discussion. In fact, it is not discussion that the plan requires, but rather *reflexion*. If, as your correspondent says, men will only consider the force of emulation, and the general application of the principle by all other professions, they will in all probability arrive at the conclusion that there should be some application of it to the law. All that discussion can effect is the bringing this idea to the mind, and that done, its continuation is superfluous. This applies peculiarly against the necessity of our formally presenting an outline of the system to the examiners: it should rather be left to them to model such a plan for the profession; at the same time an occasional refresher is of service to keep public attention awake.

There is one view of the matter which, I believe has almost escaped mention, and which, I am sure, has but to be named to meet a ready echo in the minds of "all whom it may concern." I have had, and now have, sons edu-

cating at the distinguished public school of this town. Though the expense of this must be an important consideration to every professional man, I have never grudged it, because I know the inestimable advantages of a liberal education. But although I do not *grudge* the cost, I should, of course be desirous of every possible *return* for it: and I have often thought how hard and unfair it is, that while all other professions studiously afford opportunities for the public display and reward of talent and exertion, that branch of the law which I have so long followed, and which I trust my sons will long follow after me, is totally destitute of them; and while holding up ability, diligence, and honourable feeling as the absolute essentials of her service, openly slights every spark of emulation, and is wholly wanting in all honorary distinction. As to sending a boy to college, why should I be driven to that unnecessary expense, when by a slight effort the law may be enabled herself to bestow honors on her deserving followers? It is to parents that I make this appeal—and can any one for a moment doubt whether or not they would agree in my sentiments? As it is, they will see that the system works a double injustice. The son has no open opportunity to show how he has appreciated and benefited by his father's care; whilst the father, who has cheerfully endured, perhaps a pecuniary inconvenience for his sake, is deprived of a recompense which would more than repay him for it all, and of the delight which he would derive from so grateful and flattering a return. And yet notwithstanding all this, they will not, until it is palpably brought to their notice, clamour for the change. But it should be effected for them, and I trust that the examiners will, before long, seriously consider the subject. It is one on which my mind has long been made up, and I therefore add my mite towards so desirable an object.

AN OLD SOLICITOR.

## SUPERIOR COURTS.

### Queen's Bench.

[Before the Four Judges.]

#### LIBEL.—PRIVILEGE OF PARLIAMENT.

*The printer of any publication alleged to contain defamatory matter is subject to proceedings in the Courts of Law in respect of such publication, though he made it under the express order and direction of the House of Commons.*

*A Court of Law has authority to determine whether the House of Commons possesses such a privilege as can defend a person who has acted under it from his common law liability in respect of his having so acted.*

[Stockdale v. Hansard.]

Libel.—Plea, that the House of Commons had, with a view to carry into effect the 5 & 6 W. 4, c. 38, s. 7, ordered a Report on the State of the Prisons, and had ordered the printing and publication of that Report on

Prisons; that the alleged libel was contained therein; that the defendant was the servant of the House of Commons, and by its command and under its authority had printed and published the said report; and that the said Commons House of Parliament heretofore, &c., on the 31st of May, 1836, resolved, declared, and adjudged that the power of publishing such of its reports, votes, and proceedings as it shall deem necessary or conducive to the public interest is an essential incident to the constitutional functions of Parliament, more especially to the Commons House of Parliament as the representative portion of it. The plea concluded with a verification.

**Demurrer:** That the known and established laws of the land cannot be superseded, suspended, or altered by any resolution or order of the House of Commons, and that the House of Commons in Parliament assembled cannot by any resolution or order create any new privilege to itself, inconsistent with the known laws of the land, and that if such power be assumed by the House there can be no reasonable security for the life, liberty, property, or character of the subjects of this realm.

**Joinder in demurrer.**

The case was argued by Mr. Curwood for the plaintiff, and the *Attorney General* for the defendant, in Easter Term (April 23, 24, and 25), and the reply was heard in Trinity Term (May 28), 1839.

Mr. Curwood, for the plaintiff.—The questions arising on these pleadings are—Has the plaintiff a right to an action for a libel on his character? If so, can that right be abridged by any authority but that of the legislature? Can the House of Commons assume to exercise by itself the authority to abridge the right and to be the sole judge of the existence and extent of such authority? *Thorp's case*<sup>a</sup> will be cited to shew that the authority of the House of Commons is what has been claimed by this plea, and that that authority exists in virtue of the "Law of Parliament." But the *dictum* of the Judges there is too large in itself, and if good, would apply not to the House of Commons, nor to any one single branch of the legislature, but to the whole three united in Parliament. The functions of each branch are now clearly defined. No one can make laws by virtue of its individual power. Otherwise each House and the Crown might make declarations of what was the law, and these, though contradictory, would equally be the law of Parliament. The authorities are collected in a pamphlet by Mr. Pemberton,<sup>b</sup> and in the argument of Mr. Holroyd, in *Burdett v. Abbott*.<sup>c</sup> *Donne v. Walsh*,<sup>d</sup> *Barnardiston v. Soame*,<sup>e</sup> and *Benyon v. Evelyn*,<sup>f</sup> are all distinctly opposed to the present claim; and

though *Res v. Wright* appears to support this claim, the language used in that case is at variance with the later authority of Lord Ellenborough in *Burdett v. Abbott*. *Ashby v. White*<sup>g</sup> and *In re Long Wellesley*<sup>h</sup> may also be relied on for the plaintiff. The case of Sir W. Williams<sup>i</sup> is directly in point, but it is admitted that the circumstances attending the decision of that case are not such as to give it great weight as a precedent. The asserted privilege of Parliament has been claimed in early times for the worst and meanest of purposes, and the cases in which it was exercised shew how dangerous it would be to the liberty of the subject and the good government of the country if the House of Commons was left to be the sole judge of the existence and extent of its own privileges.

The *Attorney General*, in support of the plea.—The House of Commons has the right to authorise this publication as a matter essential to the discharge of its legislative functions. *Res v. Wright*. It is a part of that freedom of intercourse between the members of the House and their constituents, which, for the sake of the public interests, must exist and be acted on. Though the House of Commons has directed its printer to appear and plead to this action, it does not thereby submit its privileges to the decision of this Court, or of any other tribunal than itself. The action itself might have been stopped by the House by a proceeding in the nature of an attachment against the plaintiff for a contempt; but having confidence in the tribunals of the country, it deemed it expedient to refer the case to the consideration of the Court in the ordinary course of justice, in order that the plaintiff might have the opportunity either of denying that the act was done under the alleged authority, or of shewing that the authority has been exceeded. Assuming that the publication is criminatory, it cannot be called a libel, for a libel is a criminatory writing, published without just occasion or authority. Here the occasion and the authority warrant the publication; the plea therefore is properly a plea in bar, and not to the jurisdiction; for the Court has jurisdiction over the subject-matter of the action as disclosed in the declaration; but the plea shews a reason why the Court should not exercise that jurisdiction. The plea, referring to the statute 5 & 6 W. 4, c. 38, shews that what the House has done, has been in pursuance of a public object, and in the due discharge of its functions. It does not claim, as the demurrer pretends, to supersede, suspend or alter the law of the land. It only claims to explain and declare its own privileges, which are part of the law of the land. It creates nothing new; it declares the law of privilege, as this Court declares the common law, as the occasion arises for the declaration. The argu-

<sup>a</sup> 1 Hatsell's Prec. 28 (3 Ed.).

<sup>b</sup> A Letter to Lord Langdale on the recent Proceedings in the House of Commons on the subject of Privilege, by Thomas Pemberton, M.P.

<sup>c</sup> 14 East, 11.

<sup>d</sup> 1 Hats. Prec. 41.

<sup>e</sup> 6 How. St. Trials, 1063.

<sup>f</sup> Sir O. Bridgman's Judgments, 324.

<sup>g</sup> 14 How. St. Tr. 695; 2 Ld. Raym. 938.

<sup>h</sup> 2 Russ. & Myl. 639.

<sup>i</sup> 13 How. St. Tr. 1369.

<sup>j</sup> 8 Term Rep. 293.



ment for the defendant will turn on these three points: first, the alleged grievance arises from an act done by the House of Commons in the exercise of a privilege. The question as to the existence of that privilege arises therefore directly, and this Court cannot inquire into that question so arising, but must give judgment for the defendant. Secondly, the same result must follow, even though the question arise incidentally, for as soon as the matter is shewn to be a question of privilege of either House of Parliament, this Court cannot interfere. Thirdly, the privilege as claimed does exist. As to the first, the question of privilege arises directly; for the defendant is sought to be rendered liable to this action in respect of something done in direct obedience to an order of the House of Commons. It follows then that this Court cannot enquire into the matter. The report on the prisons was adopted by the House, and is therefore in the same situation as if it had been made and entered on the journals. It cannot be contended that the printers of the journals could be liable to an action of this sort for obeying the orders of the House, to print them. No case exists where a court of law has acted in a matter on which the question of privilege arose directly, except that of *Res v. Williams* which is admitted on the other side not to be an authority. In *Donne v. Walsh*, and *Bryan v. Evelyn*, the question did not arise directly, but incidentally; and in *Barnardiston v. Soame*, it did not arise at all, and the House was no party to the proceeding. The question of privilege cannot be judged by the Courts in the same manner as that of the exemption of a witness from arrest, or the privilege of an attorney to be sued in his own court. The House of Lords frequently directs the publication of the proceedings on an impeachment. Would this Court presume to sit in judgment on such a publication? The privileges of the House of Commons exist for the public benefit, and must be enjoyed independently of the Crown, and the House of Lords. If this Court could adjudicate on those privileges, so might any inferior tribunal, so might a Scotch, or an Irish, or even a Colonial Court. In the event of any court within the three kingdoms adjudicating upon them, they might be taken by writ of error to the House of Lords, and then the independence of one House of Parliament would be made to depend on the decision of the other,—an anomaly which our constitution rejects and abhors. Or, if adjudicated upon by a Colonial Court, they might then be submitted to the Privy Council, and thus placed at the mercy of the Crown. It is manifestly absurd to suppose that it was ever intended to place the independence of the House of Commons on so insecure a footing. All our history contradicts the idea. This Court is now, in effect, assuming to sit in judgment on a law different from that which it is itself accustomed to administer. In other cases, it denies that it possesses the power to do so. The law of parliament differs from the common law, in the same manner as does the ecclesiastical law. In the case of an order

made by the Judges of the Ecclesiastical Courts, this Court will not interfere unless it is expressly shewn that such order is in direct violation of the rights of the subject, as defined by the common law; and then, on account of the Ecclesiastical Court having travelled out of its jurisdiction, this Court will interfere to restore its course to the proper limits. The courts of law are subordinate to the Houses of Parliament: they are, therefore, incapable of judging on a question of parliamentary privilege directly arising. In former times, the Houses of Lords and Commons sat together; a writ of error lay to them from the courts of law. They afterwards separated, not to diminish, but to increase the authority and power of the House of Commons. The separation did not throw the right to the appellate jurisdiction of parliament into the hands of the House of Lords, but left it where it was, the House of Lords being, as it were, merely a Committee of Parliament, to adjudicate on writs of error. The Commons are supposed, in point of law, to form part of the Court of Appeal, and to concur with the Lords in the decision.<sup>k</sup> The writ of error is still addressed to the Parliament, not to the House of Lords, in the same way as an appeal against a colonial judgment is still directed to the sovereign in council, and not to the judicial committee, although that committee has been expressly appointed by statute, as the body of members of the Privy Council which is exclusively to adjudicate in such matters. Notwithstanding the division between the two houses, whatever is done by either in the exercise of its privileges, is to be considered as the act of the whole Parliament. There is no distinction for the purpose of this argument between the House of Lords and the House of Commons: they have co-ordinate authority. The House of Commons is the grand inquest of the nation, and the power of publishing is essential to the due discharge of that inquisitorial power which all admit that House to possess. It is not pretended that this Court could issue a prohibition, or a mandamus, or a certiorari, to either House of Parliament. It cannot, therefore, decide upon their proceedings, for in every case where it can exercise such right of decision, it can issue those writs to enforce its decisions.

The liability of privileges to abuse cannot be made an argument against the existence of the privilege. There are many instances where a privilege does and must necessarily exist, and where it has always been recognized, and yet of its liability to abuse there could be no doubt. The right of the Crown to declare peace and war—the power of the House of Lords to adjudicate in the last resort—the authority of the Attorney General to enter a *nolle prosequi* to any prosecution, to refuse a fiat to a writ of error, to interfere with the filing of criminal informations, and with the granting of letters patent, are all instances

<sup>k</sup> Hale's "Jurisdiction of the Lords House of Parliament," with Mr. Hargrave's Preface. C. III, & XXII.

wherein the power possessed may be grossly abused, without there being any means of redress in the individual cases. Yet in all these instances the existence of the power is unquestionable.

[The continuation of the Attorney General's argument will be given in our next.]

### Exchequer of Pleas.

#### INTERPLEADER ACT.—EQUITABLE CLAIMS.

*Quære whether equitable claims are within the meaning of the Interpleader Act.*

This was a rule obtained at the instance of the sheriff under the provisions of the Interpleader Act, 1 & 2 W. 4, c. 58, s. 6. It appeared that one of the claims put in was for rent, and another was made on behalf of the personal representatives of a Mrs. Edwards, and it appeared that on her marriage, the property was conveyed to trustees for her use and in trust for her, for life, and after her decease, in trust for four persons, one of whom was the wife of the defendant Tring, to whose sole and separate use the property was settled on her marriage. The property was only personalty.

*Whateley*, for the execution creditor, contended that the claim for rent was clearly no ground for this application; *Clarke v. Lord*, 2 D. P. C. 55; *Haythorn v. Bush*, 2 D. P. C. 641; S. C. 2 C. M. & R. 689. The claim of the other parties appeared to be entirely of an equitable nature. The sheriff was only entitled to come to the Court for relief where the selling the goods would render him liable to an action at law. *Holmes v. Mentse*, 4 D. P. C. 300; S. C. 5 N. & M. 563, was in point, and in *Sturges v. Claude*, 1 D. P. C. 585, *Putteson, J.*, distinctly said that the act applied to claims set up in consequence of proceedings in equity. The claim as to one-fourth of the property was undisputed, for the property being merely personalty, the settlement on the marriage of Mrs. Tring was necessarily inoperative.

*Baratow* for the claimants contended that at all events the sheriff had wrongfully seized three-fourths of the goods.

*Bere* for the sheriff.—There were evidently conflicting claims, and the sheriff was entitled to relief.

*Lord Abinger, C. B.*—The case of *Sturges v. Claude* seems to be distinguishable from that before the Court; but the better course will be to enlarge the rule, in order that an action may be brought by the claimants against the execution creditor, unless the parties can agree to settle it before a Judge at Chambers, the sheriff to quit possession on security being given to restore the goods if necessary.

*Parke, B.*—I very much doubt whether the doctrine laid down in *Sturges v. Claude* is correct. The act speaks of a party having no means of relieving himself from certain adverse claims but by a suit in equity, usually called a bill of interpleader, and it gives power to a Court of Law to determine the matter in a more summary way, without compelling him

to stay proceedings by such a bill. Now I take it that a man may file a bill of interpleader when one of the claims against him is of a legal, and the other of an equitable, nature. Suppose for instance, the property of a *cestui que trust* in the hands of his trustee was seized by a third party, could it be said that in such case the *cestui que trust* is to be left entirely without remedy? If this view be correct, the decision in *Sturges v. Claude*, which is only that of a single Judge, is necessarily erroneous.

Rule enlarged.—*Putney v. Tring and others*, T. T. 1839. Excheq.

#### TENDER OF SUM DUE.—ACCEPTANCE.—COSTS.

*The defendant having tendered a sum of money at the commencement of the suit, the plaintiff refused to accept it, but subsequently, on its being paid into Court, he took it out: Held, that he was prima facie liable to the costs from the time of the tender, but that the reason of the refusal might be explained by its being shewn that the amount of damages incurred had not been ascertained.*

In this cause a rule nisi had been obtained by *Hoggins* for reviewing the Master's taxation. It was an action of *assumpsit* brought by the landlord against the tenant for the non-repair of the premises let to him. The defendant, after receiving the declaration, took out a summons at Chambers for staying all further proceedings upon payment into Court of the sum of 10*l.* and costs, but the plaintiff's attorney having refused to accept that amount, the summons was indorsed accordingly, without the parties going before a Judge. The defendant then paid the money into Court under the usual plea, and the plaintiff subsequently replied by taking out of Court the sum paid, and then served the defendant with a notice to tax costs. The Master on taxation, allowed the plaintiff his full costs, and the object of the present rule was to procure the disallowance to the plaintiff of the costs incurred from the time of the tender and its non-acceptance, to that of the replication, and their being taxed to the defendant.

*Cresswell* shewed cause, and produced an affidavit, in which it was sworn that the person by whom the tender was refused was the agent only of the plaintiff's attorney, and that his only reason for declining to accept the 10*l.* was, that he was not aware of the damage sustained, the premises being situated in Yorkshire.

*Hoggins, contra*, urged that the case fell within the principle of *James v. Raggett*, 2 B. & Ald. 776. It was the duty of the plaintiff to ascertain the amount of the damage sustained before he brought his action, and the attorney at all events should have communicated his reason for refusing the tender at the time of its being made.

*Lord Abinger, C. B.*—I think that the attorney has sufficiently accounted for his refusal

to accept the sum tendered, and that the rule should be discharged.

*Parke, B.*—The rule deducible from the case of *James v. Raggett*, is this: that where a plaintiff refuses a sum of money, tendered through the medium of a summons, and afterwards takes the same sum out of Court, where it has been paid, it is a *prima facie* case that he continued the suit for the purpose of making costs, and consequently he ought to pay the costs incurred from the time of his refusal. Good cause may, however, be shewn to rebut this inference, and in this action, which is brought to recover damages, it is sufficiently clear that the plaintiff had not ascertained the precise amount of injury done until after the defendant had pleaded.

Rule discharged.—*Ackwood v. Read*, T. T. 1839. Excheq.

#### BANKRUPT DEFENDANT.—PROOF OF DEBT UNDER FIAT.—STATING PROCEEDINGS.

*When a defendant has become bankrupt since the commencement of the suit, it is no ground for staying proceedings in the action that the plaintiff has proved his debt under the fiat. Application should be made to the Court of Review or Great Seal.*

*R. V. Richards* had obtained a rule for staying all further proceedings in this action, on the ground that the defendant had become bankrupt since the commencement of the suit, and that the plaintiff had proved his debt under the fiat. The rule was obtained on the authority of the statute 6 Geo. 4, c. 16, s. 59, which provided that no creditor who had commenced any action against any bankrupt in respect of a demand prior to the bankruptcy, or which might have been proved as a debt under the commission against such bankrupt, should prove a debt under such commission, or have any claim entered upon the proceedings under such commission without relinquishing such action or suit; and further, that the proving or claiming a debt under the commission by any creditor should be deemed an election by such creditor to take the benefit of such commission with respect to the said debt, provided that such creditor shall not be liable, &c. to the payment of the costs of the action relinquished.

*Cresswell* appeared to shew cause, but was stopped by the Court.

*R. V. Richards, contra*, cited *Harley v. Greenwood*, 5 B. & Ald. 95; *Kemp v. Potter*, 6 Taunt. 549; *Eike v. Nokes*, 2 D. P. C. 820; and 1 Bing. N. C. 69.

*Parke, B.*—When this rule was granted, the Court thought that they had no power to stay the proceedings. Upon reference to the authorities, I am confirmed in this opinion. The circumstances stated are only ground for an

application to the Court of Review or the Great Seal.

Rule discharged.—*Ransford v. Barry*, T. T. 1839. Excheq.

#### SEPARATE DEFENCES.—COSTS.

*Where an action of trespass is brought against two defendants who appear separately by two attorneys, but at the trial by the same counsel, and a verdict is found in favour of one and against the other, the former is entitled to half the costs of the trial only.*

*Ludlow, Serjt.*, moved for a rule for a review of the taxation of costs in the suit. It was an action of trespass brought against two defendants, who appeared separately by two attorneys. At the trial they appeared by the same counsel, but set up different defences. The jury found in favor of one of the defendants and against the other, and the present motion was made in behalf of the former; the master, on taxing the costs, having refused to allow him more than half the costs of the trial, and having taxed the plaintiff his full costs against the other defendant. The statute 3 & 4 W. 4, c. 42, s. 32, provided that where one of several defendants in a personal action should recover a verdict, he should have judgment to recover his reasonable costs, unless the judge should certify that there was good cause for making him a defendant. The learned judge had granted no certificate, and the action against the applicant must be considered, therefore, groundless. If he had been sued alone, he would have been entitled to his full costs, and the fact of another defendant having joined with him, ought not to operate to his prejudice.

*Parke, B.*—The Master has only acted upon the rule laid down by *Bayley, J.*, in *Griffiths v. Kynaster*, 2 Tyr. 757, which is confirmed in *Griffiths v. Jones*, 2 C. M. & R. 333; S. C. 4 D. P. C. 159; and *Gambrel v. Earl Falmouth*, 5 Ad. & El. 403. Before that decision, where several defendants joined in pleading, and one obtained a verdict, he was allowed 40s. only, unless costs had been separately incurred by him.

Rule refused.—*Bartholomew v. Stephens and Edwards*, T. T. 1839. Excheq.

#### THE EDITOR'S LETTER BOX.

The Legal Almanac and Diary for 1840 will be published before Michaelmas Term. Information should be sent in the course of the ensuing week.

The Letters of J. C. and H. K. have been received.

The last Number of this month will contain an Index and Table of Contents to complete the Eighteenth Volume.

# The Legal Observer.

SATURDAY, OCTOBER 12, 1839.

— "Quod magis ad nos  
Pertinet, et necire malum est, agitamus.

HORAT.

## STATE OF CRIME IN THE PROVINCES.

WE have from time to time<sup>a</sup> laid before our readers the chief contents of the Report of the Constabulary Police Commissioners, and we must now bring our account of it to a close.

We shall pass (for want of room) that part of the Report which gives an account of the insufficient protection at present afforded to manufacturing industry; more especially in disputes between masters and workmen. We cannot, however, omit the following observations as to the propriety of establishing a public prosecutor:

"From all parts of the country we have received suggestions of the necessity of providing for the appointment of some officer to prosecute those cases in behalf of the community at large, 'in which no individual has any special interest,' and in which the community has a special interest of its own, super-added to that of individuals. The existence of an officer in Scotland, the procurator fiscal, who exercises those functions in behalf of the public, and other beneficial operations to the general satisfaction of that kingdom, have been frequently cited in support of the representations that such an officer was essential to support the proceedings of any efficient constabulary in behalf of the public, or to complete any efficient system of penal justice. Concurring in these conclusions as to the importance of such an officer, which belongs to every enlightened system of jurisprudence, or every system where the public service is duly provided for, we would state our belief that the prosecution of crimes by a public officer has been provided for by the theory of our constitution, although it has been neglected in practice. We apprehend that the grand jury, or inquest by presentments, took one portion of the field of penal administration as public

prosecutors, and that the Attorney General, exercising the power of filing informations, took the remainder, or supplied the neglect of the function of public prosecutor over the whole of the field. The complete exercise of this function was, we think, further provided for by the appointment of King's Serjeant, one of whom attends each circuit, and also by the supplementary aid of the Solicitor General, and afterwards of the King's Counsel, who for a time exercised the power of filing informations. We might, were it in place, adduce much evidence to show that such offices as those of Attorney General, or of the Queen's Serjeant or Counsel, were not created or conferred as public honours, to reward pre-eminence in a career of private practice and emolument, or merely to mark professional standing, but for the performance of needful public service."

The Commissioners, in our opinion, clearly make out that the old duty of "watch and ward" has entirely fallen into disuetude, which is to be ascribed to the dereliction of the constitutional principle of local responsibility to the supreme executive for the prevention of crime. As a consequence, private watchmen are now extensively employed by individuals, and by associations for self-protection. This is shewn to be attended with much evil. The watchmen so employed are rarely efficient, are easily tampered with, and are necessarily subject to much local prejudice. "As against breaches of the peace by riotous, tumultuous or treasonable assemblages in the rural districts, there appears to be no other efficient protection than the distant and expensive protection of a military force. We need scarcely point out that a mob may have possession of the country, and of a large proportion of the towns, and subject them to such fire and pillage as at Bristol, before either a yeomanry corps or any body of regular troops can be got to the spot, or

<sup>a</sup> See *ante*, pp. 81, 321, 369.

be made to act." The late riots at Birmingham fearfully confirm the truth of these remarks.

The Commissioners then inquire into the various trials which have been made of a paid constabulary force. The success of the metropolitan force is universally admitted. The Cheshire Constabulary Act appears to have been a comparative failure, from the insufficient number of men appointed. The Barnet Association is "one of the most valuable instances of the use of a paid agency for the prevention of crime." In nearly two hundred places, officers of the Metropolitan Police have been engaged for the most part with marked success. The superintendent of the new police at Bristol, the Commissioner of police at Liverpool, the deputy constable at Manchester, the superintendent of the police at Hull, have been taken from the Metropolitan Police, where they served as superintendents. In a large proportion of the new boroughs, a paid police has been established, as nearly as possible on the same system, carried into practical operation by men trained in the same force. The answers from these boroughs mostly speak in high terms of the success of the new paid police.

The Commissioners next enumerate the additional services which may be rendered by a paid constabulary force. They may render valuable services as firemen; they may prevent loss of life by drowning, &c.; they may prevent accidents on the road, wanton alarms and annoyances, and they may act as inspectors of nuisances. Process may also be served by police without expense; and they may prevent frauds on the revenue.

Some calculations are then made as to the number and expense requisite for an efficient constabulary force. "The most able officers who have the superintendence of the police in the towns where a new police has been newly appointed, have stated that in consequence of the unprotected state of the vicinity of the towns, and also in consequence of the want of combined action with other towns, and the impunity thereby given to depredators, they are compelled to maintain a stronger force in those towns than would otherwise be necessary. But by a system of extensively combined action, the same objects in the prevention of crime, may be obtained with a less numerous force than by separate action in independent localities." Then as to the expense. "The whole charges upon the counties for the establishment of an ef-

ficient constabulary force, if it be established for the whole kingdom, would not, on the estimate we have made, exceed three half-pence in the pound per annum on the valuation of real property in 1815, that is, even supposing there should be no reduction of the present expenses."

We shall conclude this series of articles by giving the propositions of the Commissioners. They propose,—

1. That as a primary remedy for the evils set forth, a paid constabulary force should be trained, appointed, and organized on the principles of management recognised by the legislature in the appointment of the new Metropolitan Police Force.

2. That for this purpose on application in writing under the hands and seals of a majority of the justices assembled at any quarter sessions of the peace for the county, setting forth the insecurity of person and property, and the want of paid constables, the Commissioners of Police shall, with the approbation of the Secretary of State for the Home Department, direct a sufficient number of constables, and such officers as may, upon such examination as the Commissioners shall make or direct, be by them deemed adequate for the due protection of life and property within the county.

3. That the force shall be paid one fourth from the consolidated fund, and three-fourths from the county rates, as a part of the general expences of the whole county.

4. That the constables so appointed shall report their proceedings to the magistrates of the quarter and petty sessions where they are stationed.

5. That the superintendent shall be subject to dismissal, upon the representation of the justices of the peace in quarter sessions, and that the serjeants and constables shall be subject to dismissal upon the representation of the justices of the peace in petty sessions.

6. That the magistrates shall frame rules and regulations for the service of process, and attendance at petty or quarter sessions of such force, which rules shall be submitted to the Secretary of State, and if approved by him shall be binding.

7. That the Commissioners shall frame rules and regulations for the general management of the police, which rules shall, on the approbation of the Secretary of State, be binding.

These recommendations have, to a certain extent, been carried into effect by several acts of last session, the County and District Constables Act, 2 & 3 W. 4.

c. 93, and the acts for establishing a Police Force in Birmingham, Manchester, and Bolton, 2 & 3 Vict. cc. 87, 88 & 95, of which we shall hereafter give some account. We cannot take leave of this valuable report without bearing our testimony to the ability, impartiality, and extent of information displayed by it throughout.

### THE VACANT JUDGESHIP.

THE vacancy on the Bench, occasioned by the death of Mr. Justice Vaughan, will soon be the subject of much professional speculation. London is still in Vacation, and necessarily *indoctum*, and a legal face is only to be met with here and there, looking unusually blooming and healthy; but next week will bring back many of the wanderers, and the week after the whole hive will be in full swarm. Who among the throng will walk up Westminster Hall in ermine on the first day of next Michaelmas Term? The Attorney General? He, with a just appreciation of his own standing in the profession and great abilities, declines a *Puise* Judgeship, and well and wisely, as we think; as than he no man is better fitted for the highest judicial preferment. The Solicitor General? Here comes the old difficulty again. He has a right to it; but then not only may Penryn be lost to ministers but Newark too, if Serjeant Wilde be made Solicitor, which doubtless he would be. Serjeant Wilde, it is said, would take the Judgeship, but then Newark is also hazarded. Mr. Erle stands next on the list, and most deservedly, and Oxford is a surer card than Penryn or Newark. These, with Serjeant Talfourd, are the candidates for the office in Parliament; and we do protest against the doctrine that, if otherwise fitted, a seat in Parliament should *disqualify* a man for preferment, if his party be in power. It may be that the Solicitor General may again be prevailed on to waive his claim, in which case we should think Mr. Erle had the best chance. Mr. Wightman is also spoken of.

### PRACTICAL POINTS OF GENERAL INTEREST.

#### HOW FAR A CLERGYMAN MAY TRADE.

CLERGYMEN cannot, as a general rule, engage in any manner of trade, nor sell any merchandise under forfeiture of the treble value, 21 Hen. 8, c. 13. However, by the stat. 57 G. 3, c. 99, spiritual persons, beneficed or performing

spiritual duties, might take to farm 80 acres of land, but no more, without the written consent of the bishop of the diocese; but by the same act the same persons were forbidden to carry on any trade or dealing for profit upon pain of forfeiting the value of the goods by them bought to sell again, and *their contracts in any such trade or dealings were declared to be utterly void*. And it was determined that a joint-stock banking company was within the meaning of this act. *Hall v. Franklin*, 3 Mee. & W. 252. This decision having excited much alarm among persons interested in these and other similar companies, it has been enacted by the 1 & 2 Vict. c. 10, s. 1, that no association or partnership then formed, or which might be *firmed before the end of the then next session of parliament* (that is, the session 1839, just ended), nor any contract entered into by any of them, shall be illegal or void, or occasion any forfeiture by reason of any spiritual person being or having been a member, manager or director. And by a subsequent statute of the same session, 1 & 2 Vict. c. 106, after repealing the 57 Geo. 3, c. 99, it is enacted (s. 28), that spiritual persons are not to take a farm for occupation above 80 acres without the consent of the bishop, and then not beyond seven years, under a penalty of 40s. an acre; and by s. 29, that no spiritual person shall engage in trade, or buy or sell, or deal for profit, "unless in any case in which such trading or dealing shall have been or shall be carried on by or on behalf of any number of partners exceeding six, or in any case in which any trade or dealing shall have devolved or shall devolve upon any spiritual person, or upon any other person for him, or to his use, under or by virtue of any devise or bequest, &c.; but in none of the foregoing excepted cases shall it be lawful for such spiritual person to act as a director or managing partner, or to carry on such trade or dealing as aforesaid in person." But by s. 30, this is not to extend to spiritual persons engaged in keeping a school, or as tutors, or in respect of any thing done, or any buying or selling in such employment, or to selling any thing *bona fide* bought for the use of the family, or to disposing of books by means of a bookseller, or to being a manager or director in any benefit society, or life or fire assurance society.—Blackstone's Rights of Persons by Stewart, 403. The law on this point is of much interest in connection with all joint-stock companies.

### CHANGES IN THE LAW IN THE LATE SESSION OF PARLIAMENT.

#### No XI.

#### METROPOLITAN POLICE COURTS.

2 & 3 Vict., c. 71.

[Continued from p. 442.]

31. *Power to award costs on hearing of charges*.—And be it enacted, that it shall be lawful for any magistrate who shall hear and determine any charge or complaint, whether

or not a warrant or summons shall have been issued in consequence of such charge or complaint, to award such costs as to him shall seem meet, to be paid to or by either of the parties to the said charge or complaint.

32. *Amends may be awarded for frivolous informations*.—And whereas informations are often laid for the mere sake of gain, or by parties not truly aggrieved, and the offences charged in such informations are not further prosecuted, or it appears upon prosecution that there was no sufficient ground for making the charge; be it enacted, that in every case in which any information or complaint of any offence shall be laid or made before any of the said magistrates, and shall not be further prosecuted, or in which, if further prosecuted, it shall appear to the magistrate by whom the case shall be heard that there was no sufficient ground for making the charge, the magistrate shall have power to award such amends, not more than the sum of five pounds, to be paid by the informer to the party informed or complained against, for his loss of time and expenses in the matter, as to the magistrate shall seem meet.

33. *Penalty on common informers for compounding informations*.—And be it enacted, that in case any person shall lodge any information before any of the said magistrates for any offence alleged to have been committed by which he was not personally aggrieved, and shall afterwards directly or indirectly receive, without the permission of one of the said magistrates, any sum of money or other reward for compounding, delaying, or withdrawing the information, it shall be lawful for any one of the said magistrates to issue his warrant or summons, as he may deem best, for bringing before him the party charged with the offence of such compounding, delay, or withdrawal; and if such offence be proved by the confession of the party, or by the oath of any credible witness, such informer shall be liable to a penalty not more than ten pounds.

34. *Power to lessen the share of informers*.—And whereas by divers acts the moiety or other fixed portion of the penalties to be thereby recovered is directed to be adjudged to the informer, and the same has been found to encourage the corrupt practices of common informers; for prevention thereof be it enacted, that where by any act now in force or hereafter to be passed a moiety or other fixed portion of the penalty or penalties thereby imposed is or shall be directed to be paid to the informer, not being the party aggrieved, it shall be lawful for any one of the said magistrates before whom the conviction shall be had to adjudge that no part or such part only of the penalty as he shall think fit shall be paid to the informer.

35. *Power to mitigate penalties. Proviso as to revenue acts*.—And whereas by divers acts certain limited penalties or terms of imprisonment are imposed for offences therein mentioned, and sufficient power is not given to the justice or justices before whom the offender is convicted to reduce or lessen such penalty or term of imprisonment, whereby much hardship

is experienced; be it enacted, that where by any act now in force or hereafter to be passed a limited penalty or term of imprisonment is imposed on conviction of an offender before a justice or justices of the peace, it shall be lawful for any one of the said magistrates before whom such conviction shall be had to reduce or lessen such penalty or term of imprisonment in such manner as he may think fit: Provided always, that no penalty for the infringement of any act relating to the revenue of customs or excise, stamps or taxes, shall be reduced by any such magistrate below the amount or proportion allowed in that behalf by the act or acts specially relating thereunto without the consent of the commissioners of customs or excise or stamps and taxes respectively.

36. *Power to remand or enlarge prisoners on recognizances*.—And be it enacted, that any one of the said magistrates, if he shall think fit, may remand any person for further examination or may suffer to go at large any person who shall be charged before him with any felony or misdemeanor upon his personal recognizance (with or without sureties); and every such recognizance shall be conditioned for the appearance of such person before the same or some other of the said magistrates, for further examination, or to surrender himself to take his trial at the Central Criminal Court, or at a court of general or quarter sessions, at a day and place to be therein mentioned; and the magistrate shall be at liberty from time to time to enlarge every such recognizance to such further time as he shall appoint; and every such recognizance which shall not be enlarged shall be discharged, without fee or reward, when the party shall have appeared according to the condition thereof: Provided always, that whenever any magistrate shall take the recognizance of any person to appear at the Central Criminal Court, or at a court of general or quarter sessions, the magistrate shall be bound to return the depositions taken in the case, and to bind over the witnesses to appear and give evidence in like manner as if he had committed the party to take his trial at such court.

37. *Disputes about wages for labour done on the river, &c., (except by Trinity Ballastmen) to be settled by magistrates, provided the sum in question does not exceed 5l.*—And be it enacted, that all differences, complaints, and disputes which shall happen between any bargemen, lightermen, watermen, ballastmen (except Trinity Ballastmen), coal-whippers, coal porters, sailors, lumpers, riggers, shipwrights, caulkers, or other labourers who work for hire in or upon the river Thames, or the docks, creeks, wharfs, quays, or places adjacent, not being in the City of London or the liberties thereof, and the owners, masters, or commanders of vessels, or their agents, on the said river, or the docks or creeks thereunto adjoining, or the owners, wharfingers, or occupiers of such wharfs or quays, or their agents or other employers, respecting wages or money due to such labourers for work or loss of time, whether the same persons be employed for any certain time or in any other manner, may be

heard and determined by any of the said magistrates; and every such magistrate is hereby empowered to examine upon oath any such labourer as aforesaid, or any other witness or witnesses, touching any such complaint or dispute, and to make such order for payment of so much wages or money to such labourer as to the magistrate shall seem just, provided that the sum ordered do not exceed five pounds, besides all reasonable costs attending the prosecution of the complaint.

**38. Power to order compensation for wilful damage by tenants.**—And be it enacted, that every person who shall occupy or shall have occupied any house or lodging within the Metropolitan Police District as tenant thereof, and who shall wilfully or maliciously do any damage to the premises, or to any furniture thereof not being the property of such tenant or occupier, shall, upon complaint made to one of the said magistrates within one calendar month next after the commission of the offence or the end of the tenancy or occupation, forfeit and pay such sum of money as shall appear to the magistrate to be a reasonable compensation for the damage done, not more than the sum of fifteen pounds, to be paid to the landlord or party aggrieved.

**39. Power to deal summarily with cases of oppressive distresses.**—And be it enacted, that on complaint made to any of the said magistrates by any person who shall, within the Metropolitan Police District, have occupied any house or lodging by the week or month, or whereof the rent does not exceed the rate of fifteen pounds by the year, that his goods have been taken from him by an unlawful distress, or that the landlord, or his broker or agent, has been guilty of any irregularity or excess in respect of such distress, it shall be lawful for such magistrate to summon the party complained against, and if upon the hearing of the matter it shall appear to the magistrate that such distress was improperly taken, or unfairly disposed of, or that the charges made by the party having distrained or having attempted to distrain are contrary to law, or that the proceeds of the sale of such distress have not been duly accounted for to the owner thereof, it shall be lawful for the magistrate to order the distress so taken, if not sold, to be returned to the tenant on payment of the rent which shall appear to be due at such time as the magistrate shall appoint, or if the distress shall have been sold, then to order payment to the said tenant of the value thereof, deducting thereout the rent which shall so appear to be due, such value to be determined by the magistrate; and such landlord or party complained against, in default of compliance with any such order, shall forfeit to the party aggrieved the value of such distress, not being greater than fifteen pounds, such value to be determined by the magistrate.

**40. Power to order delivery of goods unlawfully detained to the owner.**—And be it enacted, that upon complaint made to any of the said magistrates by any person claiming to be entitled to the property or possession of any

goods which are detained by any other person within the limits of the Metropolitan Police District, the value of which shall not be greater than fifteen pounds, and not being deeds, muniments, or papers relating to any property of greater value than fifteen pounds, it shall be lawful for such magistrate to summon the person complained of, and to inquire into the title thereto, or to the possession thereof, and if it shall appear to the magistrate that such goods have been detained, without just cause after due notice of the claim made by the person complaining, or that the person detaining such goods has a lien or right to detain the same by way of security for the payment of money, or the performance of any act by the owner thereof, it shall be lawful for such magistrate to order the goods to be delivered to the owner thereof, either absolutely or upon tender of the amount appearing to be due by such owner (which amount the magistrate is hereby authorized to determine), or upon performance or upon tender and refusal of the performance of the act for the performance whereof such goods are detained as security, or if such act cannot be performed, then upon tender of amends for non-performance thereof (the nature or amount of which amends the magistrate is hereby authorized to determine); and every person who shall neglect or refuse to deliver up the goods according to such order shall forfeit to the party aggrieved the full value of such goods, not greater than the sum of fifteen pounds, such value to be determined by the magistrate: Provided always, that no such order shall bar any person from recovering possession of the goods or money so delivered or forfeited, by suit or action at law, from the person to whose possession such goods or money shall come by virtue of such order, so that such action be commenced within six calendar months next after such order shall be made.

**41. In case any house be in a filthy and unwholesome condition, the magistrate may order the same to be cleansed.**—And be it enacted, that if the guardians of the poor of any union or parish, or the churchwardens and overseers of the poor of any parish, within the Metropolitan Police District, together with the medical officer for any such parish or union, shall be of opinion, and shall certify under the hands of two or more of such guardians, churchwardens, or overseers, and also of such medical officer, that any house or part of any house within such union or parish is in such filthy and unwholesome condition that the health of the inmates or of the public is thereby affected or endangered, it shall be lawful for any magistrate acting within the district in which such union or parish is situate, if he shall think fit, to cause notice to be affixed on the door or other conspicuous part of such house, requiring the occupier or occupiers of such house or part thereof to appear before him to answer such complaint, or to cause the same to be cleansed within seven days from the date of affixing such notice; and if within the said seven days such house or part thereof shall



not be cleansed to the satisfaction of such medical officer, and if such occupier or occupiers being duly summoned shall not appear before the magistrate, and show sufficient cause to the contrary, such magistrate is hereby empowered, on proof thereof, to issue an order under his hand and seal to the guardians of the poor or the churchwardens and overseers aforesaid, to cause such house or part thereof to be cleansed, at the expence of such occupier or occupiers, and to cause the amount thereof to be levied in case of nonpayment, by distress and sale of the goods and chattels of such occupier or occupiers, by warrant under the hand and seal of such magistrate.

42. *No other justice shall take fees within the Police District. Penalty 100l.*—And be it enacted, that neither any justice of the peace for any of the said counties, or for the city and liberty of Westminster, or liberty of the Tower of London, not being one of the said magistrates, nor the clerk of any such justice, nor any person on his behalf, shall directly or indirectly, upon any pretence whatever, take any fee or recompence for any act by him or them done or to be done as justice of the peace or clerk as aforesaid within any part of the Metropolitan Police District for which a police court shall have been established under the authority of this act, upon pain of forfeiting the sum of one hundred pounds for every such offence, one moiety thereof to the said receiver, to be applied to the purposes of this act, and the other moiety thereof, with full costs of suit, to the person who shall sue for the same in any of her Majesty's Courts of Record at Westminster; but this enactment shall not be construed to extend to any fees taken at any general or quarter sessions of the peace, or at any meeting of justices for the purpose of licensing alehouses, or for the purpose of inquiring into the legal settlement of any person applying for parochial relief, and making suspended orders of removal, or to any fees taken at any special or petty sessions of the justices in respect of business which must be transacted at such special or petty sessions, or to any fees taken by any vestry clerk, or by the clerk to the overseers of any parish, for the purpose of enforcing the payment of any rates or taxes arising within the same parish.

43. *Table of fees to be hung up.*—And be it enacted, that, notwithstanding any thing hereinbefore contained, such fees as are contained in the schedule (A.) to this act annexed may be taken by any of the said magistrates or by any justice or justices acting in any of the said courts; and a table of such fees shall be fixed in some conspicuous part of each of the said courts; and it shall be lawful for any of the said magistrates to refuse to do any act for which any fee shall be demandable unless such fee shall be first paid; and that if any such act shall be done and the fee due thereon shall not be paid, it shall be lawful for any of the said magistrates to summon the person from whom such fee shall be due, and to make order for payment of the same, with the costs of

the proceedings, and in default of payment to levy the same, with the costs of the distress, by warrant under his hand.

[To be continued.]

## BANKRUPTCY PRACTICE UNDER 1 & 2 VICT. c. 110, s. 8.

To the Editor of the Legal Observer.

Sir,

ALLOW me to call the attention of your readers to the 8th sect. of the 1 & 2 Vict. c. 110, in reference to the present practice of the Court of Bankruptcy thereunder. The substance of the clause is, I think, as follows:—That if one or more creditors whose debts shall be of the nature specified in the act, shall file an affidavit of the debt in the Court of Bankruptcy, give notice thereof to the debtor, and demand in writing immediate payment of his debt, and he should not within twenty-one days compromise, or "enter into a bond in such sum and with such two sufficient sureties as a Commissioner of the Court of Bankruptcy shall approve of," then, on a fiat issuing within two months, the debtor is made a bankrupt.

Now, under that portion of the clause which I have marked with inverted commas, the Commissioners require that the creditor, or some one on his behalf, shall appear before them, and that for this purpose he should have notice of the time when the debtor purposes to attend; but it appears to me the act cannot be construed to warrant the Commissioners in so doing. They have no power, except such as the act gives them, and therefore they should neither require more nor less than the act itself. And it should be observed, that the Court of Bankruptcy does not, like the superior Courts of Common Law, and indeed most of the inferior Courts, exist partly by common and partly by statute law, but solely by the latter. My object, however, is not to insinuate that the Commissioners have any wish or interest in going beyond their authority, but to induce them to reconsider the subject, that the practice of the Court may be settled upon a firm and substantial basis.

Before I conclude I will endeavour to shew that the question is not only of great importance to the Commissioners in acting judicially right, and to the profession in knowing the practice of the Court in this respect, and upon what it is founded, but also to the public in a pecuniary point of view. When an act of parliament imposes a duty, and that for the benefit of another, it should also provide, either directly or indirectly, a mean of remuneration, and in this case it does. The creditor must employ his attorney to prepare the requisite affidavit of debt,—to get it sworn and filed,—to draw the notice of its being filed and demanding "immediate payment," and have a copy served personally on the debtor,—all this the act imposes on the creditor, and he must either do it himself or get it done. If he does it himself, he sacrifices a portion of his time,

and pays ready money out of his pocket; if he instructs his attorney, the case is still worse; for to the loss of time and payment of money is added the attorney's bill. But then, if he compromises with his debtor, he may include the expenses to which he may have been put. Not so if the debtor enters into a bond; for although the penalty and the sureties must be to the satisfaction of the Commissioner, yet the condition is only for "such sum or sums as shall be recovered in any action or actions which shall have been brought or shall hereafter be brought," &c. Therefore to add to the loss of the debt, and the time and money above alluded to, that of either attending personally or by a qualified paid substitute, cannot, I conceive, have been the intention of the legislature. It does not appear to me to be within either the letter or the principle of the act to require the attendance of the creditor on the bond being entered into, for the reasons which I have briefly stated, and since it is expressly a matter for the approval of the Commissioner as a Judge, and not of the creditor.

Some may be ready to urge that the clause is not imperative, and that the creditor may elect to act upon it or not. True; but, independent of the express purpose for which it was enacted, we deem the act to be an improvement upon the former law, which it is not, if it renders necessary the attendance of the creditor. Let the learned Commissioners remember that their duty consists in administering the law as it stands, without increasing or diminishing its demands. J. C.

## THE LAW OF JOINT INTERESTS.

[Continued from page 379, ante.]

### CHAPTER II.

#### Sect. 1.

To create joint-tenancy or a simple tenancy in common, the property must not be acquired by the donees or grantees, as merchants or traders for traffic, or for speculative purposes, which, either in law or equity, are regarded not as the simple mode of enjoying the property *per se*, but as inducing an expenditure or risk among the joint-owners, in order to effectuate a project or adventure in respect of it. In such cases, from the relative expense which may naturally arise, it would be unjust to permit the *jus accrescendi*, for parties so jointly engaged may possibly stake the whole of their respective properties in the transaction, precluding the implication of an intention of holding in joint-tenancy. (*Per M. R.*, 3 Ves. 629.)

It is universally acknowledged that the absence of the *jus accrescendi* among partners is, by the custom of merchants, the *lex mercatoria*, which is part of the law of England, and recognised by it as such. (1 *Ld. Raym.* 281; *Anon.*, 1 *Mod.* 223; 2 *Inst.* 58; *Devaynes v. Noble*, 1 *Mer.* 563; 2 *Ves. sen.* 33; *per M. R.*,

*Ch. Ca.* 127; *Ch. Rep.* 139; *Lofft.* 385; *Suppl. to Ves. sen.* 375; 9 *Ves.* 591, note.)

Sir E. Coke observes, that the wares, merchandises, debts, or duties that parties have, as joint merchants or partners, shall not survive, but shall go to the executor of a deceased partner, *per legem mercatoriam*, which is part of the laws of the realm, for the advancement and continuance of commerce and trade, which is *pro bono publico*. (*Co. Litt.* 182 *a*; *Noy*, 55; *per Owen*, 2 *Brownl.* 99; 4 *Com. Dig. Estates*, 67; 20 *Vin. Ab. tit. Survivor*, 148.)

The rule is *jus accrescendi inter mercatores pro beneficio commercii locum non habet*. (*York v. Eaton*, *Freem.* by *Hov.* 23.)

It is said, in a marginal note to *Co. Litt.*, that all the authorities that Lord Coke has cited for his position do not bear upon the point, but it is not the less to be relied on; and I think we may well concur with Lord Chief Justice *Best*, who is reported to have said, "I fear we should get rid of a great deal of what is considered law in Westminster Hall if what he (Sir E. Coke) says, without citing an authority, is not law." (*Per Best*, *C. J.*, 9 *B. Moore*, 502.)

Many gentlemen have written treatises on the subject of partnerships. (Messrs. *Gow, Collyer, Watson, Montague.*) My object is merely to distinguish its principal features from other joint-ownerships; and I have found it necessary to discuss it by itself.

Puffendorff describes it as being "contractus societatis, quod duo pluresve inter se pecuniam, res aut operas conferunt, eo fine, ut quod inde redditus lucri inter singulos pro rata dividatur nec minus si quid proveniat damni a singulis pro rata feratur." (*Puff. lib.* 5, cap. 8; 7 *Jarm. Byth.* 1; *Gow's Partnership*, 1.)

It is described by another author thus: "Societas est contractus juris gentium bonæ fidei, consensu constans, super se honestâ de lucri et damni communione, quam inire possunt omnes liberam habentes rerum suarum administrationem." (*Vest. Comm. lib.* 17, tit. 2, s. 1; *Collyer*, 2.)

According to Vinny: "Societas est contractus quod inter aliquos res aut operæ communicantur lucri in commune faciendi gratiâ." (*Vinn. Comm. lib.* 3, tit. 26, s. 1.)

By the Institutes: "Ita posse coiri societatem non dubitatur ut alter pecuniam conferat, alter non conferat, et tamen lucrum inter eos commune sit, quia scope opera alicujus pro pecuniâ valet." (*Inst. lib.* 3, tit. 26, s. 2; *Collyer*, 2.)

The description given by these writers is applicable to our law. It is said to be the joint concern, by buying and selling in profit and loss. (*Per C. B. Comyns*, 1 *Salk.* 291; *Gow*, 1.)

Where a party bought tea for several, to be afterwards divided between himself and the others, and received a warrant for the delivery of the tea, which he pledged for a sum of money, the other purchasers were held not to be liable for the money borrowed: for the partnership must be *consensu constans*; else,

as in the present case, a hundred persons might be made partners who had never seen nor heard of one another. Also a mere joint purchase without any ulterior joint purpose, is insufficient to create a partnership; as where a contractor for the purchase of goods permitted others to come in for a proportion of them, but there was no proof of a joint concern as to the disposal of them. (1 Salk. 291; Dougl. 376; *Coope v. Eyre*, 1 H. Bl. 37; 2 M. & Scott, 146; 1 Campb. N. P. 331, note.)

But in most cases a participation in the profits of a partnership creates a liability for the loss, for by that a part of the fund which is the proper security to the partnership creditors for the payment of their debts is abstracted; and this leads to the observation that partnership is a contract of dealing with property by way of speculation with third persons or the public. It has therefore been decided that a person allowing his credit and name to be used as a partner may become liable to the creditors of it; otherwise great imposition and fraud might be induced, for the public must, in the course of trade, treat him as a partner who appears to be such. They cannot be expected to know the interests of the partners *inter se*, or if it were necessary that they should ascertain them prior to their dealing, commerce and trade would be obstructed. There may be dormant partners, therefore, and ostensible partners; but it has not in all cases been found an easy matter to apply the law to the facts as they have occurred. (1 Rose, 287; 18 Ves. 300; 19 *Ibid.* 291, 294, 459, 461; 4 B. & Ald 663; 7 D. & R. 444; 2 Sir W. Bl. 998; 4 M. & P. 615; 17 Ves. 403; 2 B. & C. 401; 2 Bing. N. C. 108; Rose, 44; 1 Sim. 297; 16 Ves. 66; 9 D. & R. 186; 2 B. & C. 401.)

In order to distinguish it from a joint-tenancy or tenancy in common, Mr. Jarman's definition is well worthy of attention. He distinguishes partners from other joint-owners, not by their having a joint interest in property, for that does not necessarily make a person a partner, but by their joint dealing, *ultra* the mere purpose of occupation or enjoyment. (7 Jarm. Byth. 2.)

Through the lien or equities of the partners in the stock the right of their respective creditors is worked out; and it has been held necessary for this purpose, to consider the partners as holding a sort of joint-tenancy or tenancy in common of the stock; and when it is necessary that an account should be taken no person claiming under a partner is better off than the partner himself. These points generally occur on a dissolution of a partnership, when the rights of the partners and their creditors are to be determined. A dissolution, from whatever cause, merely destroys the implied authorities of the partners. Power is only left to wind up the affairs of the concern. Upon the event happening, and before any actual division takes place, the partners are considered as tenants in common of the stock and effects, and before a creditor can lay claim to or charge the share of any, the claims of the partners *inter se* are to be settled. It is neces-

sary, therefore, to account for the accretions and subtractions of one before his creditor's claim can attach on his share. (*West v. Ship*, 2 Ves. sen. 239, and Suppl. by Belt, 135; 17 Ves. 135, 403; 2 V. & B. 172; 1 Ves. jun. 236; 6 *Ibid.* 119.)

A dissolution is created by the decease of a partner (unless the articles stipulate the contrary), and then the representatives of the deceased and the surviving partner are as tenants in common of the stock, and the former have a lien on the effects in the hands of the survivor, who is as a trustee for them.

There seem *dicta* in equity tending to shew that the legal right to the effects of a partnership survives at law.

In one case an injunction was granted to restrain goods from being taken in execution for a debt due from a partner, who died before the writ was delivered to the sheriff; for that, it was said, only binds goods on delivery, and at law the property survived to the other partners. Therefore the defendant, it was held, acquired no legal right to them. (*Newell v. Townsend*, 6 Sim. 419.)

If has been decided lately, notwithstanding doubts, that the creditors of a partnership, one member of which dies and the survivor becomes bankrupt, have a right to resort to the assets of the deceased for payment, without regard to the state of accounts as between the deceased and the surviving partner. And this even where it is not proved that the survivor is insolvent; for partnership debts are joint and several in the consideration of equity. The doubts, it is held, must have arisen from the unfounded supposition that the joint estate is the first fund, and that on the death of one partner it may pass to the survivor, and if he were insolvent, the assets of the deceased might then become liable. (*Devaynes v. Noble*, 2 Russ. & M. 495, by Brougham, C.; *Wilkinson v. Henderson*, 1 M. & K. 582; 11 Ves. 514; 1 Mer. 564; 3 *Ibid.* 614; 2 Atk. 691.)

However, it is very clear, that equity in cases of joint speculation, and even in trade, will go further in curtailing the right of survivorship than a court of law will.

By the better opinion, it seems that at law real property conveyed to merchants and traders is subject to the rules of joint-tenancy; though, both at law and in equity, as to the moveable stock and effects of a partnership, the personal representatives of a deceased partner are tenants in common with the survivor. (Collyer, 66; Gow, 48.)

In Mr. Collyer's Treatise on Partnership it is said, with regard to Sir E. Coke's observation as to joint merchants, "That it seems clear that when Coke wrote, the distinction between traders and merchants in general had been fully established. It is probable, therefore, that in that passage Lord Coke referred to merchants properly so called,—those who export the native products and manufactures of the kingdom or her colonies to foreign climes, or import the commodities of different countries into this kingdom. But however this may be, Lord Keeper Harcourt

observed, that in his time the custom of merchants was extended to all traders to exclude survivorship, and the custom so extended has never been contravened." (Beaves, 13; 1 Vern. 217.)

We may observe from Brownlow, that this extension is made in favour of shopkeepers, as well as other traders or merchants, for that there are four species of merchants and all within this custom, *viz.* merchant adventurers, dormant, travelling and resident. (2 Brownl. 99.)

#### Sect. 2.

In equity, if lands are purchased by partners for partnership purposes, though the cases have varied, yet, by the greater number and according to recent opinions, it appears they are to be considered as converted into personality. We direct the reader's attention to some recent cases here cited—3 Bro. C. C. 199, et note; 7 Ves. 425; 9 Ves. 500; 2 Y. & J. 250; 4 Bac. Ab., Guill. ed., 997; Smith's Mar. Law, 86; 7 Jarm. Byth. 21; Montague, 97, note; 2 Dow. 231; *Phillips v. Phillips*, 1 M. & K. 649; Ram on Assets; Collyer; Gow; *Randall v. Randall*, 7 Sim. 271; *Cookson v. Cookson*, 8 Sim. 529.

Real estate conveyed to partners and their respective heirs as tenants in common, to be used in trade during the partnership, with a covenant against alienation, &c. during its continuance, has been held not to be converted into personality, for the partners had no interest in the property, except what they derived through the covenants. (9 Ves. 500; 2 Hov. Suppl. 187; Collyer, 77.)

And real property may be conveyed to partners in trust for the partnership, and the legal estate in the trustees survives. (8 Jarm. Byth. 190, note.)

In consequence of this implied conversion, it is held in equity that where real property is purchased by partners for partnership purposes, the legal estate passes to the survivor, but he in equity is as a trustee for the representatives of the deceased, and will be enjoined from availing himself of his legal title to get possession for himself by ejectment. (*Lake v. Craddock*, 3 P. Wms. 158; *Elliott v. Brown*, 3 Swanst. 489, note; *Tryster v. Dolland*, 1 Ves. jun. 435; 8 Ib. 317; Smith's Mar. Law, 84; Matthews on Presumptions, 75.)

In equity it has been held that a colliery is a kind of trade, and creates a partnership. (2 Atk. 630; 5 Ves. 308; *Jefferys v. Smith*, 1 Jac. & W. 298.)

Also, that a fulling-mill is in the nature of a trade: so of a mine. (3 Atk. 19; *Ibid.*, 264; Amb. 54.)

That a ship may be the subject of a partnership, and the letting it to freight a sort of trade. (*Per* Chancellor, 1 Ves. sen. 498.)

But it is to be remarked, that these joint-ownerships are not in all cases strict partnerships. Thus, a mining concern differs from a common trading partnership. The shares of each shareholder are assignable without the consent of the other part-owners, and the death or bankruptcy of the holder of a share

does not destroy the joint interest. The part-owners cannot bind each other by bills of exchange, &c. But, on the other hand, a receiver has been appointed of a mining concern, from the nature of it being a species of trade, and not a mere tenancy in common: in which latter case there must be very strong grounds for such an interference. (*Per* M. R., *Fereday v. Wightrick*, 1 Russ. & M. 45; Tamlyn, 250; 1 Mont. & A. 635; 1 Jac. & W. 298; 10 B. & C. 128.)

Of course, such a concern by stipulation, or perhaps from the conducting of it, may be made a partnership, and then the share of one cannot be sold without an account. (4 Dea. & Ch. 113.)

Part-owners of a ship are a sort of tenants in common, and certain authorities stamping them with the character and liabilities of partners are overruled. (*Ex parte Young*, 2 V. & B. 242; *Ex parte Harrison*, 2 Rose, 76; Ves. Suppl. 202, 206.)

They cannot set-off their proportions of a debt due by them jointly to a bankrupt partner against the debts due by the bankrupt to them severally; for this is no more than a joint and separate set-off. A part-owner's interest, therefore, cannot be connected with the idea of a separate interest. (*Ex parte Christie*, 10 Ves. 105.)

A part-owner's share passes to his representatives. The Court refused a *mandamus* to register a ship transferred by the survivor of two partners, merchants, because the executor of the deceased partner ought to have joined in the transfer. (*Re v. Collector of Customs at Liverpool*, 2 Mau. & Sel. 233.)

A learned writer has observed, that if a ship be made over to several in distinct shares, there is no survivorship; but if the interest be not so severed, but the entire ship is granted entire to several, it is supposed that they are joint-tenants at law, and that the maxim *jus accrescendi inter mercatorias locum non habet*, as to a ship, is applicable only in equity. (Abbott on Shipping, 68, and note.)

Mr. Collyer remarks, that a ship is a chattel of which the owners are possessed as tenants in common, though if it be conveyed to them at one time and by one instrument, they are more properly joint-tenants, without benefit of survivorship. After quoting the passage in the last cited work, he observes that no grounds are given for the opinion. (Collyer, 166, and note.)

Mr. Smith conceives it possible that joint-tenancy may hold place in a ship, as well as any other chattel; but that the operation of the Registry Acts occasions this property to be subject to a tenancy in common. (Smith's Mar. Law, 106.)

The Registry Acts (6 Geo. 4, c. 110; 3 & 4 W. 4, c. 55) provide that the shares shall be distinguished, and the parties entitled as tenants in common, except with respect to partners in trade, who need not distinguish their shares; and that as to them, it shall be partnership property for all purposes. But from the enactment are excepted British

boats and vessels of a certain burthen, &c.; and, as against wrong-doers, part-owners may have property in a ship without registry; and registry is no proof of ownership for or against a party. It only affords certain privileges to British vessels. (*Ex parte Burn*, 1 Jac. & W. 378, and note; *Abbott on Shipping*; *Jackson v. Anderson*, 8 C. & P. 480.)

Independently of these acts, the rules which govern other cases, must be applied to ships or boats. [To be continued.]

### DUTIES OF SOLICITORS TO THEIR ARTICLED CLERKS.

To the Editor of the Legal Observer.

Sir,

HAVING observed in your journal of the 10th of August, the unjust letter from G. P. on the Duties of Solicitors to their Articled Clerks, I was pleased to find it so ably responded to by a "Constant Reader," in the Observer of the 7th of September, and as we have in the following number another complaint from "Hugo," may I be allowed to say that I (being as well as your "Constant Reader," articled to a Solicitor in one of the Midland counties) think G. P. should have confined his observations to *his own* case, whatever may have been the treatment he has received (but which I believe he has strongly exaggerated). I beg leave to inform him that the designation of "humble scribes" will not apply to articled clerks, in our district, nor do they "toil from day to day in the drudgery of their profession," and the recreation they are allowed is something more than "carrying out parcels and letters."

The condemnatory style of G. P.'s letter, I think, does him no credit. Undoubtedly amongst the immense number in the profession, many will be found who do not their *actual duty* to their articled clerks, but I fear, could the respective merits of master and clerks be placed in a scale, to the latter we should have to exclaim with Shakspear—

"What a falling off was there."

I firmly believe, generally speaking, if clerks attended more to *their duty*, we should not often find such complaints as your correspondent has launched forth;—for my own part I can say, I have found the utmost liberality in the gentleman to whom I am articled, not only as regards his professional duty, but also in his private capacity; still I am no "kinsman clerk," and I would add, in conclusion, that G. P.'s assertion that "masters, instead of instructing us, positively keep us as ignorant of practice as they can," is perfectly absurd, for surely it must be conducive to *their own interest* to get their clerks as forward as they can; and whatever G. P. may assert, I do not believe but that every solicitor, be he even G. P.'s own apparently unworthy master, would feel greater pleasure in hearing the actions of the person *whom he taught* applauded than debased.

AN ARTICLED CLERK.

[We think this subject may now rest for the present, as sufficiently discussed on both sides. Ed.]

### MAGISTRATES AT THE NEW METROPOLITAN POLICE COURTS.

THE following is a List of the Magistrates appointed or continued under the Metropolitan Police Courts Act, 2 & 3 Vict. c. 71, and which we have extracted from the forthcoming Legal Almanac and Diary, for 1840. The Act will be found at pp. 403, 440, &c. *ante*.

*Bow Street.*

Thos. J. Hall, Esq., Chief; Samuel Twyford, and David Jardine, Esqrs.

*Great Marlborough Street.*

H. M. Dyer, and George Lung, Esqrs.

*Hatton Garden.*

Boyce Combe, and J. B. Greenwood, Esqrs.

*Worship Street.*

R. E. Broughton, and W. Grove, Esqrs.

*Lambeth Street, White Chapel.*

J. Hardwicke, Esq., and Hon. G. C. Norton.

*High Street, Mary-le-Bone.*

J. Rawlinson, and H. G. Codd, Esqrs.

*Queen Square, Westminster.*

D. W. Gregorie, and J. Burrell, Esqrs.

*Union Hall, Southwark.*

T. Traill, and H. Jeremy, Esqrs.

*Thames Police Office, 259, Wapping Street.*  
W. Ballantine, and W. Broderip, Esqrs.

### LIST OF THE STATUTES, 2 & 3 VICT.

#### PUBLIC GENERAL ACTS.

1. An act to amend an act of the first and second year of her present Majesty for the more effectual relief of the destitute poor in Ireland.
2. An act to apply the sum of two millions to the service of the year one thousand eight hundred and thirty-nine.
3. An act to authorize the immediate distribution of a portion of the fund applicable to the relief of persons entitled to certain arrears of tithe compositions under an act of the last session of parliament, to abolish compositions for tithes in Ireland and to substitute rent-charges in lieu thereof, and for other purposes.
4. An act to alter the powers of jointuring contained in several acts for purchasing and providing a residence and estates for the Duke of Wellington, and to settle certain articles to go as heirlooms with the said estates.
5. An act for punishing mutiny and desertion, and for the better payment of the army and their quarters.
6. An act to apply the sum of eight millions out of the consolidated fund to the service of the year one thousand eight hundred and thirty nine.
7. An act for the regulation of her Majesty's Royal Marine Forces while on shore.
8. An act for raising the sum of thirteen millions by exchequer bills, for the service

the year one thousand eight hundred and thirty nine.

9. An act for repealing part of an act of the last session of parliament, intituled "An act for suspending until the first day of August one thousand eight hundred and thirty nine, and to the end of the then session of parliament, the appointment to certain dignities and offices in cathedral and collegiate churches, and to sinecure rectories."

10. An act for enabling the trustees of the British Museum to purchase certain houses and ground, for the enlargement of the Museum, and making a suitable access thereto.

11. An act for the better protection of purchasers against judgments, crown debts, *lis pendens*, and fiats in bankruptcy.

12. An act to amend an act of the thirty ninth year of King George the third, for the more effectual suppression of societies established for seditious and treasonable purposes and for preventing treasonable and seditious practices, and to put an end to certain proceedings now pending under the said act.

13. An act for extending the copyright of designs for calico printing to designs for printing other woven fabrics.

14. An act for removing doubts as to the appointment of a Dean of Exeter or of any other Cathedral Church.

15. An act to provide for the more effectual execution of the office of a justice of the peace within and adjoining to the district called The Staffordshire Potteries, and for purposes connected therewith.

16. An act for improving the practice and proceedings of the Court of Pleas of the County Palatine of Durham and Sadberge.

17. An act to secure to proprietors of designs for articles of manufacture the copyright of such designs for a limited time.

18. An act to enable archbishops and bishops to raise money on mortgage of their sees, for the purpose of building and otherwise providing fit houses for their residence.

19. An act to amend an act of the sixth and seventh years of his late Majesty King William the Fourth, for consolidating the laws relating to the presentment of public money by grand juries in Ireland, so as to enable the grand jury of the county of Waterford to make presentments on account of the Fever Hospital of the said county, although situate in the county of the city of Waterford.

20. An act to authorize the application of part of the land revenues of the crown for the erection of stables and stable offices contiguous to Windsor Castle.

21. An act for granting to her Majesty, until the fifth day of July one thousand eight hundred and forty, certain duties on sugar imported into the United Kingdom, for the service of the year one thousand eight hundred and thirty nine.

22. An act to enable justices of assize on their circuits to take inquisition of all pleas in the Court of Exchequer of Pleas which shall be brought before them, without a special commission for that purpose.

23. An act to consolidate and amend the laws for collecting and securing the duties of excise on paper made in the united kingdom.

24. An act to repeal the duties and drawbacks of excise on bricks, and to grant other duties and drawbacks in lieu thereof, and to consolidate and amend the laws for collecting and paying the said duties and drawbacks.

25. An act to remove doubts as to the charging certain of the duties of excise on glass.

26. An act to provide for the enactment of certain laws in the island of Jamaica.

27. An act for regulating the proceedings in the borough courts of England and Wales.

28. An act for more equally assessing and levying watch rates in certain boroughs.

29. An act for the better protection of parties dealing with persons liable to the bankrupt laws.

30. An act for apportioning the spiritual services of parishes in which two or more spiritual persons have cure of souls generally throughout the parish.

31. An act to continue until the first day of June one thousand eight hundred and forty-one, and to the end of the then session of Parliament, the local Turnpike Acts in England and Wales which expire with this or the ensuing session of Parliament.

[To be continued.]

## SUPERIOR COURTS.

### Lord Chancellor's Court.

#### PRACTICE.—INFANTS.—ORDER OF REFERENCE.

*An order of reference to the Master to inquire which of two bills filed on behalf of an infant ought to be proceeded with, is properly obtained on a petition or motion of course; but if the application be made by special motion, with notice, the order will still be made, on payment of the costs of all the parties before the Court.*

Two suits having been instituted by different next friends of an infant, a special motion was made by the next friend in one of them for a reference to the Master to inquire and state which of the suits was most beneficial to the infant, and proper to be proceeded with, and for a stay of all proceedings in both in the mean time. The *Vice Chancellor*, before whom the application was made, refused the order, on the ground that the motion was properly a motion of course, but as the party moving thought proper to make it a special motion and bring the other parties to the suits before the Court, instead of taking the order at his own risk, he was bound to make out a special case on the merits, which his Honor thought the party failed to do, and he therefore refused the application.

The *Solicitor General* and Mr. J. Parker, on behalf of the next friend, in support of an appeal motion from his Honor's decree, after

stating the facts and what passed before the *Vice Chancellor*, said, all they asked for by their present motion was the reference to the Master. If they were entitled to the reference as of course, there was no reason for refusing it because they had given the other parties notice of their application.

Mr. *Girdlestone* and Mr. *Russell*, for the next friend in the other suit, opposed the motion on several grounds:—First, that an order of reference which suit is most for the benefit of infants, is always made on a petition or motion of course. *Sullivan v. Sullivan*; <sup>a</sup> *Owen v. Owen*; <sup>b</sup> *Campbell v. Campbell*.<sup>c</sup> These parties were clearly wrong in making a special application, with notice, for an order which was always granted as of course on the responsibility of the party applying. Another objection to this motion was that the notice of motion was entitled in the second cause, and some of the defendants to the second had not put in their appearance to the bill. The practice was that one cannot move against parties in this way before appearance. *Hill v. Rissnell*.<sup>d</sup> A third objection to the motion was that it was for a stay of proceedings as well as for the reference, and was made on behalf of adult parties, who had no right to make such an application. The application should be made, if made at all, on behalf of the infant. The next friend could not be heard to make it, for he took it on himself to go on with the suit; but here a stay of proceedings was asked.

The *Lord Chancellor* was of opinion that the case of *Sullivan v. Sullivan* was decisive, and unless it could be shewn that that case was wrong, he would not go into merits in this case. That part of the motion before the *Vice Chancellor*, asking for a stay of proceedings was omitted, in this notice of motion.

Mr. *Girdlestone* could not shew that the case of *Sullivan v. Sullivan* was wrong, but he submitted that, unless his Lordship held that the present was a case for a special application, there was no ground for making it a motion with notice.—imposing expence on all parties. The *Vice Chancellor* thought the motion was quite irregular, and refused it because no special case was made out on the merits. As there was no special case, why should a special application be made, contrary to the practice as laid down in *Sullivan v. Sullivan* and the other cases before referred to? The notice of motion now was different from the notice of the motion refused by the *Vice Chancellor*, but the difference only made the present motion more properly a motion of course.

Mr. *Wakefield*, for one of the defendants who did not appear at all to the second suit, and was served with notice of the motion, asked for costs.

The *Lord Chancellor* said, in respect to that part of the motion below which asked to stay proceedings, and to which Mr. *Wakefield's* client was a necessary party, as that part of the motion failed, he was clearly entitled to

costs. That was not a part of the present motion, and the question was how far he was entitled to costs of this.

The *Solicitor General* in reply, said this case was like that of *Sullivan v. Sullivan*, and all he now asked for was such an order as was made in that case, or in the case of *Mortimer v. West*.<sup>e</sup>

The *Lord Chancellor*.—This is entirely a question of costs. There is no reason why a party should not obtain on special application what he was entitled to on a motion of course, but having made a special application where a motion of course was sufficient, he should pay the costs of all the parties brought unnecessarily before the Court. The order of reference may be taken on that understanding.

*Kelsey v. Larkin and others*.—Sittings at Lincoln's Inn, July 12, 1839.

### Queen's Bench.

[Before the Four Judges.]

**LIBEL.—PRIVILEGE OF PARLIAMENT.**

[Continued from page 447.]

The decisions of the Judges have not been uniform on the subject of privileges, and, in early times, are worse than useless. For instance, in the time of Richard 2, they, in answer to questions from the King, declared that the Parliament possessed no right to impeach the King's officers for any offences, "and that if any one should do so he is to be punished as a traitor." Yet that right is one about which no one entertains a shadow of a doubt. And in the case of *Stroud, Long, Selden and others*, in the time of Charles 1, the King, on the avowed authority of the Judges, committed to custody several members of the House of Commons for acts done by them in Parliament. That he had lawful power to do so is a proposition which is now considered to be too absurd to require refutation. Several other instances of the same sort might be cited. The decision of the matter of Parliamentary privilege cannot therefore be entrusted to the Courts; and there is the less reason for so entrusting it, since if any House of Commons abuses its privilege the evil may be cured by a dissolution, as was done in the case of Wilkes. Except in the case of *Res v. Williams*, now confessedly treated as bad law, there is no instance in which the authority of the Courts has been enforced against an alleged abuse of this kind.

This is a proceeding by way of demurrer, and the record contains a declaration of the House of Commons upon a matter of Parliamentary privilege. That declaration is evidence of the law which the Court is bound to receive as authority. Thus the resolutions of the Judges are taken as evidence of the law of England, and judicial notice is taken of a custom of trade which has been found by a special jury, or a custom of London which has been certified by the Recorder. The adjudication of the House of Commons on a question of

<sup>a</sup> 2 Merivale, 40.

<sup>b</sup> 1 Dick. 310.

<sup>c</sup> 2 Myl. & C. 25.

<sup>d</sup> 2 Myl. & C. 541.

<sup>e</sup> 1 Swanst. 358.

Parliamentary privilege must surely be taken to be of as high authority as either of these.

Now, as to this question arising incidentally, all the authorities shew that where a question comes incidentally before a Court not having original jurisdiction in the subject-matter, such Court must decide according to the law of the Court which has the original jurisdiction. He cited a great many authorities to this point. This Court must therefore decide according to the declaration of the House of Commons on this matter of Parliamentary privilege. This Court could have been prevented by the House of Commons from proceeding in the present case in the way in which Courts of exclusive jurisdiction interfere to prevent other Courts from acting in matters within such jurisdiction. That shews that this Court is not possessed of jurisdiction in the matter, for if it was there could be no means to prevent its exercise of that jurisdiction.

This Court has no jurisdiction to enquire into the existence of the privilege now claimed; but assuming it to be competent to do so, it may be shewn that the power of printing and publishing reports and papers, though of a criminatory nature, for public information and benefit, has long existed. If the House has the power to order such publication, the order is sufficient justification for it, and no action will lie. It is conceded that a publication confined to the members of the House is lawful. That concession admits the whole matter, for all the alleged injuries consequent upon another publication must follow from it. Then what is to be done with the copies thus in the hands of a large number of individuals? Are they to be privileged while each of these individuals remains a member of the House, but to become common libellous publications the moment he ceases to be so? Suppose he dies, what are his executors to do with these copies? Must the executors burn them? or if they did so, would they be liable to a proceeding for waste? What is the member himself to do with them on a dissolution? Is he to be liable to an action or an indictment if he retains them, and suffers, whether accidentally or wilfully, a third person to look at them? Are these printed papers to change their nature with his changed situation, and to be innocent papers while he continues to be a member, and to become libellous the moment he has lost his seat? The rule required to be laid down is so preposterous in itself, and so impossible to be carried into full effect, that it cannot possibly be one which the law will sanction. The existence of this privilege is proved by its necessity,—by the long usage of it,—by long acquiescence in it. The necessity is obvious. The members and the constituents alike require it as a means of information for the due discharge of legislative duties, and the due preservation of the rights and advantages of the people. The usage is clearly established. It followed the invention of printing, and took the place of the clumsy and less efficient mode of publication which proclamations at the County Court afforded. The ac-

quiescence in it up to the present moment, with the single exception of the case of *Hea v. Williams*, has been uniform, and publications for the good of the community have been held even by the Courts of Law to be privileged. He cited a great many cases in support of this proposition. It is clear, therefore, upon all these grounds, that the plea furnishes an answer to the action, and that the Court must give judgment for the defendant.

Mr. Curwood in reply.—Most of the cases on the other side shew that from the earliest times the Courts have in fact taken on themselves to decide on cases of privilege. *Wilkes' case* was a case of this kind. The Commons set themselves up against the law, but were obliged to give way. It is impossible to avoid enquiring into cases of privilege. Suppose that the House of Commons passed a resolution of the most absurd and ridiculous kind, it is admitted that that resolution could not be questioned in the House itself; but if under it the officers of the House proceeded to imprison a man against the laws of the land, there is no doubt that he would have his remedy in a Court of Law. The power inherent in all the branches of the legislature cannot be possessed by one, for that would be to give each full legislative authority, which is impossible. It is impossible to understand the distinction between cases of privilege coming directly and coming incidentally before the Court. The true rule is, that the Court must notice claims of privilege whenever they come judicially before it. As to the alleged necessity for this privilege, there can be no necessity to circulate calumny against individuals. As to usage, it is but of a doubtful kind. The first instance capable of being cited is that where the Commons were endeavouring to raise troops to act against the king; and the present usage has only existed two years, and has already been the subject of two actions.<sup>a</sup> A power which is liable to abuse may always be examined, whoever is the possessor of that power, or under whatever name it may be sought to be exercised. The law of parliament must, like all others of a peculiar kind, be subject to the general law of the land,—it must be within the jurisdiction of the Courts, and liable to be restrained in its exercise by their application of the common law to its claims and demands. Otherwise the greatest inconvenience might follow, and a real despotism be created under the name of Privilege of Parliament.

The importance of the case induced the judges to deliver their opinions *seriatim*.

Lord Denman, C. J., after stating the declaration and plea, said, The plea, it is contended,

<sup>a</sup> Both were actions by this plaintiff in respect of the publications on the subject of Prisons. In the first the defendant pleaded a justification of the truth of the libel, and obtained a verdict on the justification. The defence of the authority of the House to order the publication, was on the record in the present action only.



establishes a good defence to the action on various grounds. 1. The grievance complained of appears to be an act done by the order of the House of Commons, a Court superior to any court of law, and none of whose proceedings are to be questioned in any way. This principle, the learned counsel for the defendants repeatedly avowed; but it does not appear to have been put forth in its simple terms in the report that was published by a former House of Commons. It is a claim for an arbitrary power to authorise the commission of any act whatever on behalf of a body, which in the same argument, is admitted not to be the supreme power in the state. The supremacy of Parliament, the foundation on which the claim is made to rest, appears to me completely to overturn it, because the House of Commons is not the Parliament, but only a co-ordinate and component part of the Parliament. That sovereign power can make and unmake the laws: but the concurrence of the three legislative estates is necessary; the resolution of any one of them cannot alter the law, or place any one beyond its control. The proposition is therefore wholly untenable, and abhorrent to the first principles of the constitution of England.

2. The next defence involved in this plea is that the defendant committed the grievance by order of the House of Commons in a case of privilege, and that each House of Parliament is the sole judge of its own privileges. This last proposition requires to be first considered. For if the Attorney General was right in contending, as he did more than once in express terms, that the House of Commons by claiming any thing as its privilege thereby makes it a matter of privilege, and also that its own decision upon its own claim is binding and conclusive, then plainly this Court cannot proceed in any enquiry into the matter, and has nothing else to do than to declare the claim well founded, because it has been made. We are informed that a large majority of the House of Commons adopted the proposition I have stated. It is not without the utmost respect and deference that I proceed to examine what has been promulgated by such high authority. But when one of my fellow-subjects presents himself before me in the Court, demanding justice for an injury, it is not at my option to grant or to withhold redress: I am bound to afford it, if the law declares him entitled to it. I cannot avoid the question whether the defendant possesses the legal right to be protected against all consequences of acting under an order issued by the House of Commons, in conformity with what that House considers to be its privilege.

Parliament is supreme. But it follows then that neither branch of it is supreme when acting by itself. It is said that the privilege of each House is the privilege of the whole Parliament. In one sense I agree to this, because whatever impedes the proper action of either impedes those functions which are necessary for the performance of their joint duties. But it by no means follows that the opinion which either House may entertain of its own privi-

leges is correct, or its declaration of them binding. It is said that the privileges of the Commons belonged to them for their protection against any encroachment of the Lords. The fact of an attempted encroachment may then be imagined: the commons would resist it. In such a case the claims set up by the two Houses being inconsistent, both could not be well founded, and an instance would occur of adverse opinions and declarations, while the real privilege, whenever it is ascertained, would certainly be the inherent right of Parliament itself. It has been said that the reason for denying the courts of law all power in matters of privilege was to be found in the ancient jealousy of the Commons as to the interference of the Lords, because a decision by a court of law might be reviewed on appeal by the rival assembly. Yet it is admitted that the appellate jurisdiction of the House of Lords is of recent date, and originally belonged to the whole Parliament, of which the Commons formed part.

[To be continued.]

### Exchequer of Pleas.

TRESPASS.—DISTINCT ACTS.—TIME OF COMMENCEMENT OF SUIT.—DEMAND OF COPY OF WARRANT OF DISTRESS.—24 G. 2, c. 44.

*Where in an action of trespass it appeared that the defendant, a constable, seized the plaintiff's goods (under an alleged distress for church-rates) on one day, and gave notice that unless they were redeemed within five days they would be sold, and in the mean time he removed them into an adjoining county, and at the expiration of the five days brought them back and sold them: Held, that the seizure, and removal and sale, were distinct acts of trespass; and that under the 53 G. 3, c. 127, s. 12, an action might be brought within three months of either of them.*

*Where a copy of the warrant of distress is demanded, under the 24 G. 2, c. 44, the demand need not specify any time within which it is to be given; and if a time is mentioned different from that referred to in the statute, it is immaterial.*

Kelly had obtained a rule, calling upon the plaintiff to shew cause why a nonsuit should not be entered. It was an action of trespass for seizing, taking, carrying away, and selling the goods of the plaintiff, and the defendant pleaded Not Guilty. At the trial it was proved that the plaintiff was an inhabitant of the parish of Haddenham, Bucks, of which the defendant was constable, and that the plaintiff having refused to pay an amount of church-rate to which he was assessed, the defendant, on the 27th of October, 1837, under a distress warrant, seized his goods, giving him notice that unless he redeemed them within five days they would be sold. The defendant then carried the goods to Thame, in Oxon, and on the 2d November brought them back and sold them. It was admitted that the warrant of

distress was irregular, in not setting out the sum to be demanded of the plaintiff, and there were also some irregularities in the proceedings taken previous to its being issued. On the 22d of January the plaintiff made a written demand of a copy of the distress warrant, desiring that it might be furnished to him in three days, but no notice was taken of it, and on the 30th of January the present action was brought. The defendant contended that the plaintiff must be nonsuited, for that he had not commenced his action within the time limited by the statute 53 G. 3, c. 127, s. 12, and also because the demand of a copy of the warrant was informal in requiring it to be delivered within three days instead of six, as pointed out by the act of 24 G. 2, c. 44. A verdict, however, was entered for the plaintiff, with nominal damages, leave being reserved to the defendant to make the present motion.

*B. Andrews* and *Byles* now shewed cause, and submitted that the suit was commenced within the time limited by the statute. Three months was the time mentioned, and actions were referred to which were commenced for anything done under the provisions of the act. The seizure was on the 27th of October, but the removal and the sale were equally acts of trespass with it, and they did not take place until subsequently, the sale being clearly within the three months. The defendant, besides, by removing the goods out of Bucks, in which he had authority, into Oxon, where he had no authority as a constable, lost the protection of the act, and the question of time, therefore, would not arise. *Godin v. Ferris*, 2 H. Bl. 14, was a different case from this, because there the goods being forfeited, the act was complete when the seizure was made. Here the seizure and the sale were not *ejusdem generis*, because the plaintiff might have redeemed them in the intervening time between them. In actions for false imprisonment against magistrates, they were liable only for such part of the imprisonment as was within six months of the action being commenced. *Massey v. Johnson*, 12 Esp. 67; *Pickersgill v. Palmer*, Bull. N. P. 24. [*Purke*, B.—Although in a question of false imprisonment every detention is a fresh imprisonment: with respect to goods a detention is not a fresh taking.] The criminal law would serve to illustrate the doctrine contended for. It was laid down in *Hawk. Pleas of the Crown*, Vol. 1, p. 33, that every felony was founded on an act of trespass; so that when there was a felonious taking in one county, and a removal of the goods into another, there would be an implied trespass in both. The defendant therefore, in this case, supposing it to have been one of felony, might be indicted in Oxon. 1 *Saund.* 24, n. 1, and *Winterbourne v. Morgan*, 11 East, 395, and 2 Camp. 117, were also referred to. As to the second point, there was no necessity to mention any time in the demand; and the time mentioned therefore was immaterial.

*Parke*, B.—I always thought that there was nothing in that second objection. The act says that a demand in writing shall be made,

and that the constable shall have six days in which to comply with it. Six days must therefore elapse before an action can be commenced, but no time need be mentioned, and the demand is not vitiated by the mention of three days.

*Kelly* and *Gurdon*, in support of the rule, admitted that the second objection could not be sustained. As to that first argued, they contended that the seizure was the foundation of the action, and was the essential act from which the time must be computed. The subsequent proceedings to remove and sell the goods were only parts of the same transaction; and they all formed the fact committed for which the statute intended to afford protection. The substantial matter of complaint was the seizing, and the sale was only aggravation. The criminal law afforded no analogy by which the present case might be decided, nor could any argument be drawn from the cases of trespass to persons, or to real property. In the former instance every moment's detention was a fresh imprisonment, and in the latter, every fresh step on the land, against the will of the owner, was as much a trespass as the first entry. The cases of *Theobald v. Crichmore*, 1 B. & Ald. 227; *Fraser v. The Swansea Canal Company*, 1 Ad. & El. 354; *Saunders v. Saunders*, 2 East. 254; *Crook v. M' Tavish*, 1 Bing. 167; were cited as in favour of the defendant.

*Cur. adv. vult.*

*Purke*, B., subsequently delivered the judgment of the Court. After stating the facts as before detailed, he said that the question to be decided was, whether the action was commenced within the time prescribed by the act, and therefore it must be determined from what precise time, and from what particular stage of the proceedings the three calendar months mentioned in the statute should be calculated. In order to ascertain this they might well compare the words used here, which were, "next after the fact committed," with the form used in the Statute of Limitations, which might well serve as a guide. In the latter the words were "next after the cause of such action or suit," and applying the construction put upon them to this case, the question was whether the plaintiff was entitled to recover only with reference to the original seizure, or with reference to the subsequent removal into Oxfordshire, and the subsequent sale? If the two latter, then he must be admitted to be in time. The Court were of opinion that the action need not have been brought within three calendar months after the seizure, for the removal into Oxfordshire was a distinct trespass in itself, as was also the subsequent sale on the 2d November, for both of which the plaintiff might have recovered damages in an ordinary action of trespass, even if more than six years had elapsed after the original seizure. Setting aside, however, the analogy between this case and the Statute of Limitations, and if the same construction was not to be placed on these statutes which afforded protection to public officers (a point not as yet precisely

cleared up), still the Court were of opinion that this action was sustainable under the 53 G. 3, c. 127, s. 7, for that statute directed not only the seizure, but also the sale, so that both stood on the same footing, and jointly constituted one continuing trespass, which formed the real grievance of the complaint. Several cases had been cited for the defendant, but they were all distinguishable from that before the Court. In all of them the goods were seized for a distinct act of forfeiture, beyond which there was no step to be taken; there was no conditional power of selling as here, but when once seized the goods were forfeited to the Crown. In those cases, therefore, it was well decided that the action ought to be brought within the time specified next after the fact; but here the case was otherwise, for the sale and the seizure were both done in pursuance of the act, and the suit might be well brought within three calendar months of either. Independently of this position, the removal into Oxfordshire was a clear and distinct act of trespass.

Rule discharged.—*Collins v. Rose*, T. T. 1839.—Excheq.

**ACTION ON NOTE.—PLEA, NO NOTICE OF DISHONOUR.—PROOF OF NOTICE.—EVIDENCE OF ACCOUNT STATED.**

*Where to an action on a bill or note, the defendant pleads no notice of dishonor, the plaintiff must prove an actual notice, and mere knowledge is not sufficient.*

*In a case where the notice is not so proved, unless it is admitted that the money is due, the bill will not be evidence of an account stated.*

This was an action of *assumpsit*, brought by the indorsee against the indorser of two bills of exchange; the declaration also contained a count on an account stated. Pleas: No notice of dishonor, and to the second count, *non assumpsit*. The cause was tried before Parke, B., and it appeared that the plaintiff discounted the bills for the defendant, one of which became due on the 4th and the other on the 5th April. On the former day the defendant called on the plaintiff, and requested him to discount another bill, to which however, the latter answered by observing, that there were two bills coming due on that and the following day. The defendant replied that he was aware of that, and that they would not be paid, because the drawer had become bankrupt, and, beyond this, there was no notice of dishonor. The defendant therefore contended, that the plaintiff must be nonsuited, for that upon the issue raised, actual notice must be proved. The learned judge was of the same opinion, and a nonsuit was entered.

*Kelly* now moved pursuant to leave reserved, to enter a verdict for the plaintiff, and contended, that knowledge on the part of the defendant that the bills would be dishonored dispensed with the necessity for notice. In *Cory v. Scott*, 3 B. & Ald. 619, it was decided that the drawer of a bill having no effects in the hands of the acceptor, and having no right

upon any other ground to expect the bill to be paid, was entitled to no notice of dishonor, and the principle established by that was, that where knowledge existed that the bill would not be paid, no notice was necessary. The plaintiff, however, was at all events, entitled to a verdict upon the second count, for wherever the action was between intermediate parties, on that count the note was evidence.

*Parke, B.*—I think that proof of knowledge is not sufficient to support the allegation of notice of dishonor, but that there must be a regular notice informing the party that the bill has been presented and dishonored, and that it is intended to hold him responsible for its amount. In *Cory v. Scott*, a difference of opinion existed among the judges, as to whether the proof of circumstances which would excuse notice, would be sufficient to support the allegation of notice, and I was always of opinion, and am so still, that the allegation ought to be proved where it is made. As to the second count, the bills are not evidence in support of it, because there is no admission of the money being due; but all the defendant says is, that he knows the bills will not be paid. That only amounts to an admission that at some future time there will be money due, but only due after the bills have been presented, and notice of dishonor given. The bills, therefore, do not amount to evidence of an account stated until those contingencies have taken place. In this case, the Court think, however, that the plaintiff should be at liberty to amend, on payment of the costs of the day.

*Alderson, B.*—As to the first point, it is far better to maintain the simple meaning of the word "notice," than to confound it with knowledge. If the argument on the second point were to prevail, the admission made here must be taken to be an admission of a present debt; but I think that there was only an admission that money would afterwards, upon certain contingencies, become due.

Rule refused.—*Bird v. Legge*, T. T. 1839. Excheq.

## THE EDITOR'S LETTER BOX.

Our Reporter has, with great care, given the arguments, as closely as possible, in the case of *Stockdale v. Hansard*; as it would be difficult for the Legal Observer to print all the judgment, and at the same time injudicious to be without the case, he has abstracted the arguments of the Judges, eschewing their rhetoric and confining himself to their reasoning. By this course we shall be enabled to put the judgments into a tolerably narrow compass.

The letter on the Jurisdiction of Local Courts, shall be inserted early.

A Correspondent near Chesterfield, who requests our advice on a short course of reading for the examination, is referred to the second edition of the Articled Clerk's Manual.

*Erratum*, p. 434, "Retainers—advising and drawing pleadings, for "lease" read "case."

# The Legal Observer.

SATURDAY, OCTOBER 19, 1839.

— " Quod magis ad nos  
Pertinet, et nescire malum est, agitur. —

HORAT.

## A PROPOSED NEW LAW COMMISSION.

WE have recently\* adverted to the mode of proceeding in private bills in parliament, and we have also called our readers' attention to the interesting evidence of Mr. Tyrrell respecting the form of the bills themselves. All that has been done at present as to this, is to confirm the appointment of a permanent officer for the preparation of breviate of the private bills, with a salary of 1500*l.* a-year, and Mr. Booth of the Chancery bar has been selected for this purpose; but this is not all that is projected.

In compliance with the recommendation contained in the report of the committee of 1838, Mr. Booth and Mr. Symonds were employed under directions received from the government "to classify the private bills, and prepare drafts of general bills." The report of these gentlemen, with the forms of these bills, were submitted to Mr. Tyrrell, and his letter in answer to this communication, and his evidence before the committee (both of which are contained in the Appendix to their Second Report of 1839), and from which we have made very large extracts, are of much interest, and receive additional importance from the favour and attention which they received from the committee, although they have not yet been acted on.

In his letter, Mr. Tyrrell justly says, "If the proposed measures were carried into effect in a perfect manner, it would be difficult to over-rate their importance, but the benefit to be expected from them must be in proportion to the degree of excellence with which they are framed." He then refers to

the forms of bills prepared and submitted to him, but although he thinks them an improvement on the bills usually prepared, yet he does not give them his approbation.

No one can read the extracts which we have made from the evidence of this gentleman, far less have seen the mode in which private bills are now passed, but will be convinced that some alteration in the system is imperatively demanded. Let us see what Mr. Tyrrell, after his great experience on this matter, proposes.

In answer to various questions, he submitted his plan of a commission for this purpose, which it will be more convenient to give in a condensed form, and stripped of its interrogative form. He recommends that the work should be sanctioned by a joint committee of the two Houses of Parliament, or by a commission, of which influential members of both Houses should be members: that under the direction of such a committee or commission a certain number of lawyers might proceed first to class the private acts, and determine upon the number and description of general acts which they would recommend; and then to make a report of their proceedings, and of those points on which they might wish to obtain the direction of the committee, particularly of the different new provisions which might appear to be necessary. That for this purpose the gentlemen employed should be taken out of the profession, and constantly employed. "I have long been of opinion," says Mr. Tyrrell, "that a general reform of the law can never be accomplished in a comprehensive or perfect manner, unless some competent lawyers are taken out of the profession for that purpose. I think it would be desirable not to have too many, and to select those who most probably would work well together. I would beg

\* See *ante*, pp. 401 & 417, and the Report of the Select Committee, *ante* p. 331.

leave to suggest that the work might be entrusted to three conveyancers, and they should have the assistance of Mr. Booth as an equity lawyer; and also of some common law barrister to whom they could apply for assistance and advice whenever they might require it; perhaps, also, the assistance of Mr. Symonds could be given as secretary. I think a larger number would impede, rather than facilitate business."

We can only say that we much approve of this proposed new law commission, as thus suggested; and we beg to remind that school of economists which grudges the public money for such purposes, of the simple fact mentioned by Mr. Tyrrell, that the Real Property Commission, by one act alone, saved the people of this country 100,000*l.* a-year in the alienation of property,<sup>b</sup>—a much larger sum than the whole commission cost. We would further call their attention to the statement of Mr. Tyrrell as to the *enormous gains*<sup>c</sup> of the Law Commissioners. Mr. Tyrrell states that the duties of the Real Property Commissioners permanently reduced, to a considerable extent, his own income, and that of some of his colleagues. He may well say after this that "there are many members of the profession who always feel an interest in promoting any beneficial public object."

We shall be glad to hear, therefore, that the suggestion of Mr. Tyrrell as to the Commission are attended to by its appointment, and we venture to say that when its labours are completed, it will save the country in one year, in preventing useless litigation, all that it will cost; and, when we consider the vast amount of property now regulated by private acts of parliament, and the slovenly and prejudicial manner in which they are allowed, almost necessarily to pass, we think that for some time the Commission would have enough to do in remedying these evils. If its labours in this respect were closed, how properly it might be employed in other objects, perhaps even more important, we might easily shew Mr. Tyrrell indeed suggests its future occupation. "When the measures for the improvement and regulation of the private business have been completed, their time could be advantageously devoted to the consolidation, to a considerable degree, of the statute law."<sup>d</sup> And let us add that, if this task were finished, there remains behind one even more important, which we see distinctly must soon be commenced,

there being many premonitory signs that the time is ripening for it,—we mean THE CONSOLIDATION OF THE COMMON LAW, to which we have repeatedly called the attention of our readers, and to which we purpose to devote much of our space in the ensuing legal and parliamentary session.

## NOTES ON EQUITY.

### PRACTICE UNDER 1 & 2 VICT. c. 110.

By the 1 & 2 Vict. c. 110, it is enacted, that if any person against whom any judgment shall have been entered up in any of her Majesty's Superior Courts at Westminster, shall have any government stock, funds or annuities, or any stock or shares of or in any public company in England, whether incorporated or not, standing in his name in his own right, or in the name of any person in trust for him, it shall be lawful for a judge of any one of the Superior Courts, on the application of any judgment creditor, to order that such stock, funds, annuities or shares shall stand charged with the payment of the amount for which judgment shall have been so recovered, and such order shall entitle the judgment creditor to all such remedies as he would have been entitled to if such charge had been made in his favour by the judgment creditor; and by the 10th section it is enacted, that all decrees and orders of Courts of Equity are to have the effect of judgments in the Superior Courts of Common Law. Some doubt, however, seems to have existed whether it was the intention of the legislature to extend the summary provisions for charging stock to Courts of Equity. The *Vice Chancellor* has, however, made such orders; and on the 31st of January last an order *nisi* was obtained to shew cause why the capital stock now standing in the books of the Governor and Company of the Bank of England, in the name of the plaintiff, should not be charged with the sum of 28*l.* 11*s.* 8*d.*, the amount of the taxed costs of a motion made in the suit by the plaintiff, which had been refused, with costs. *Alderson, B.*, said, "The question is, whether this is not like a judgment at common law, where it is not necessary to serve the party with notice of process. I think it is. The order therefore must be made absolute, unless the plaintiff, within a fortnight, pay the costs of the present application, together with the 28*l.* 11*s.* 8*d.*, and interest on the same." *Blake v. White.* 3 *Yo. & Col.* 434.

<sup>b</sup> See *antè* p. 418.      <sup>c</sup> *Antè* p. 423.

<sup>d</sup> See *ante*, p. 425.

## PARTITION SUIT.

Whatever may be divided at Common Law may also be the subject of a partition by a suit in Equity; and further, many kinds of property may be partitioned under the direction of a Court of Equity, which could not be divided at Common Law. *Agar v. Fairfax*, 17 Ves. 547; *Bodicoate v. Steers*, 1 Dick. 69. In a partition in Equity it is not necessary that every part of the estate, if there be more than one, should be divided; it will be sufficient if each partner have an equal share of the whole. See *Clarendon v. Hornby*, 1 P. Wms. 446. If there are several things to be divided, the rule in equity seems to be, that if a division can be effected so that each party may have a part, the irregularity of the portions may be made up in money. But if there is one thing to be divided, then if a partition is insisted on, it will be enforced, however inconvenient or absurd the consequence may be. Thus, where there was a house, and also lands of smaller value than the house, it was decreed that one of the parties should take the house, and the other the lands; and that a recompense should be made by the person taking the greater share, to the person taking the share least in value; that is to say, by the person taking the house to the person taking the lands. *Clarendon v. Hornby*, 1 P. Wms. 446. But it was laid down in the same case, that if there is but one house, it shall be divided into halves. *Ibid.* 448. And this shall be done although the benefit of the thing so divided shall be entirely destroyed to both parties, (see *Warner v. Baynes*, Amb. 589), as a partition is a matter of right. *Cartwright v. Pulteney*, 2 Atk. 380; *Norris v. Le Neve*, 3 Atk. 83. In a very late case on this subject, Mr. Baron Alderson gave the following opinion on what might be awarded in a partition suit. "Several objections have been made to the return of the commissioners. One is, that the abbey has been awarded to Edward Atkinson Lister. I see no objection in that. It must be assigned to some one. It would be difficult to assign it to the several other parties on the mere ground that they have lived there a long time. I am not prepared to say, therefore, that the commissioners have done wrong in assigning it to the testator's heir at law. As to the valuation, I shall not go into that question. The cases have decided that it is improper for the Court to interfere with the valuation of the commissioners, unless there be any mistake in it so gross as to

induce the Court to think that the commissioners have acted from unjust, corrupt, or fraudulent motives. The decision in the case of *Story v. Johnson*, 1 Y. & C. 546, with which I fully agree, proceeded entirely on that principle. With respect to the roads and easements, I see no cause to quarrel with the award of the commissioners. The principal parts of the roads were used with the premises assigned, and it would be perfectly just and proper, in estimating the value of the premises, to take into consideration the roads which the parties had previously enjoyed. And with regard to the easements, though it is not usual to create an easement over another person's land, yet it is otherwise when a separation of property takes place; and it is necessary that a certain part of it should be assigned to a person who cannot have the use of it without a right of way." The learned Baron, on a subsequent day, also held that commissioners of partition might direct new fences to be made, to divide the lands which are the subject of partition. *Lister v. Lister*, 3 Y. & Col. 540.

## JOINT STOCK AND PATENT COMPANIES.

[We extract the following short statement of the law relating to Joint Stock Companies from a work just published, called "A Manual of the Law of Scotland, by John Hill Burton, Advocate." It appears to us to be carefully and accurately compiled.]

## Sect. 1. Principles generally applicable to Joint Stock Companies.

Public companies incorporated by royal charter or act of parliament, possess the privileges of other corporations, E. iii, 3, 28. Whether these exist under the authority of an act of parliament, or of a charter of incorporation, or are merely constituted by the voluntary union of the members, their constitution differs essentially from that of an ordinary partnership. The object is not to enable certain parties to unite their efforts for some common object, but simply to enable individuals to invest money in a project in which they have personally no administration, the management of the common stock being left to official persons. Here it is not the person, but the money, that is essentially the object of the contract, and so it is a general feature in such undertakings that the shares are property which may be succeeded to, or transferred from hand to hand. Such a body cannot, unless empowered by act of parliament, charter of incorporation, or letters patent, bind itself, or pursue or defend in its descriptive name, but it would seem that it may pursue in its descriptive name, and the

names of a majority of the individual partners. *Shotts Iron Company, &c.* against *Hopkirk*, 19th January, 1828. Whether it can do so in the name of any office-bearer is questionable; but it is the received opinion that it can, B. C. ii, 629; and it has been decided that where parties are under an obligation to a company, and an office-bearer of the company or his successors, the office-bearer may pursue for fulfilment. *Fisher v. Syme*, 7 December, 1827.

**Responsibility of members.**—It is generally the object of such companies to contract on the credit of the joint stock, without rendering the parties individually liable. No case has lately occurred to bring out the question whether this object can be attained without an act of parliament, nor indeed can it be laid down as fixed law, that a charter of incorporation has in Scotland the effect which it has in England, of limiting the responsibility of the members, unless it be granted in terms of the act 6 Geo. 4, c. 91. A comparatively old case appears to countenance the principle that partners in ordinary joint stock companies are not liable beyond their shares. *Stevenson v. Macmair*, 14th February, 1757, 5 Br. Sup. 340. In France it is fixed law that, by a partnership *en commandite*, the liability of a portion of the stockholders may be limited to their amount of stock. Code de Commerce, lib. i. tit. 3, § 1. In England, this privilege belongs only to corporations, and "every member of an unincorporated trading company, no matter of what number of persons it consists, is answerable to the full extent of his private property for the whole of the debts of the company." Collyer, 651. Involving such a serious responsibility, the evidence of partnership in a joint stock company, is much stricter in England than it would probably be here, were the doctrine of the above case adopted. Assuming management as a director, and signing the deed of settlement, are conclusive evidence of partnership, the commencement of which will be carried back to the payment of any deposit. Mere verbal accession, however, signing a prospectus, making application for a share, paying a deposit, &c. will not involve responsibility, nor can an individual be held responsible if he neglect to perform the conditions which enable him to share the profits," or if the terms under which he had proposed to become a partner, "are not reasonably fulfilled by the projectors," unless he have signed the deed of settlement. Collyer, 626—634. See Wordsworth on the Law relating to Joint Stock Companies, App. ii. In Scotland, it has been decided that where the responsibility is limited by act of parliament to the amount of subscribed stock, each partner is liable to meet the debts of the company to the whole amount of his stock, and not merely according to his proportion. *Malcolm v. West Lothian Railway Company*, 10th June, 1835.

Shares in such companies may become the subject of ordinary commerce, and will be held as transferred where "there is evidence of a mutual consent and transfer," independently of any fixed regulations by the company as to the

form of transference. *Weatherley v. Turnbull*, 3d June, 1824. The managers of a joint stock company being in the position of trustees, are bound to adhere to the original objects of the company. In a late case, where a company was organised for the purpose of carrying goods and passengers between Leith and Australia, the managers, who were empowered to export and import goods, were found not entitled to take consignments of goods, guaranteeing the price on *del credere*, or to trade at ports not intermediate between Leith and Australia. *Maston v. Brown*, 18th January, 1839.

**Deed of settlement.**—The regulations of a joint stock company are generally embodied in the deed of settlement. This instrument "constitutes trustees of the partnership property, directors of the partnership affairs, auditors of its accounts, and such other officers as the objects of the society require, and contains covenants for the performance of their respective duties, which are specifically set out, as are those of the other partners or shareholders; it also defines the number of shares, the power and method of transferring them, and of calling for the instalments required to be made therein; the mode of convening general meetings of proprietors, their rights when convened, and a variety of other rules suited to the exigencies of that particular undertaking. Smith's M. L. 2d edit. 58. It has been found that a provision in the prospectus or contract of a joint stock company that the capital shall reach a certain amount, is not a condition the non-fulfilment of which will release the subscribers; but that they are bound to pay up their shares, though a smaller sum only should be subscribed. *Turner v. Molison*, 30th May, 1833; *Caledonian Dairy Company v. Campbell*, 4th February, 1834.

When the concerns of the company are extensive, an act of parliament is generally obtained, which enables the society to sue and be sued in the name of an office-bearer, and usually limits the amount of capital to be subscribed. It has been decided that as between the partners, stipulations entered into prior to the passing of the act, and not embodied in it, are binding. *Wishaw, &c. Railway Company, v. Stewart's Representatives*, 1st March 1837.

#### Sect. 2. Companies under the Patent Act.

To avoid those cumbrous peculiarities of a corporation, which are inconvenient to a mere trading company, and to render the expense of an act of parliament unnecessary, the legislature has lately provided for the limitation and regulation of the responsibility of partners by means of letters-patent. These may be granted under the great seal for Scotland to individuals and their representatives, empowering them to sue and be sued through one of two registered officers, and limiting the amount of their individual responsibility to a certain sum per share. 7 W. 4, & 1 Vict. c. 73, ss. 2, 3, 4. The company must be constituted by a deed of partnership, containing its designation, object, and place of business, with the designations of the members, and appointing two officers to sue

and be sued. *Ibid*, s. 5. Within three months after the date of the letters patent a return of these particulars, and of the shares (as designated by their members) held by each individual, together with the extent of responsibility of each, must be made to the register house, and when transfers of shares are made a similar notice must be sent within three months. *Ibid*, ss. 6, 9, 16. No person is entitled to a share of profits, unless he be registered as a member, and every person is held to remain a member, and continues to be responsible as such, until a return of his ceasing to be so is registered. *Ibid*, ss. 20, 21. When responsibility is limited to a certain sum per share, no action can be brought against a member for a larger sum than the unpaid balance of his subscription. *Ibid*, s. 24.

### Sect. 3. Joint Stock Banks.

Any joint stock banking company in Scotland may sue and be sued in the name of the manager, cashier, or other principal officer, provided that before commencing business and between the 25th of May and the 25th of July annually, a return be made to the collector of stamps, of the name of the firm, of the names and designation of all the partners, of the places where branches are established, and of the office-bearer in whose name the company is to sue and be sued. The return must be made on the affidavit of that office-bearer. 7 Geo. 4, c. 67, ss. 2, 3, 7. Certificated special returns must be made of any additional office-bearer appointed to represent the company, of all retiring and newly appointed partners, and of any new agencies. *Ibid*, s. 6. A company delaying to make the specified return forfeits 500*l.* per week during the delay, and if a false return is made 500*l.* is forfeited by the company, and 100*l.* by the office-bearer who makes the return. *Ibid*, s. 14.

## CHANGES IN THE LAW

IN THE LATE SESSION OF PARLIAMENT.

### No. XI.

#### METROPOLITAN POLICE COURTS.

2 & 3 Vict., c. 71.

[Concluded from page 454.]

44. *Proceedings on information before magistrates.*—And be it enacted, that all offences committed within the limits of the Metropolitan Police District, which under this or any other act are punishable on summary conviction before a justice or justices of the peace, may be heard and determined by any of the said magistrates sitting at one of the said police courts, in a summary way, within six calendar months at the farthest next after the commission of such offence, or within such shorter time as shall be limited by the act specifying the offence, and not afterwards, whether or not any information in writing shall have been exhibited or taken by or before such magistrate; and all such proceedings by summons without information in writing shall be

as valid and effectual as if an information in writing had been first exhibited in that behalf; Provided always, that a note or memorandum in writing, according to a form to be approved by the Secretary of State, shall be made and kept in the Court of the substance of every charge for which a summons or warrant shall be issued: Provided also, that the magistrate, if he shall think fit, may require an information in writing to be laid in every case in which it shall seem to him to be expedient before the matter of the complaint or charge shall be brought before him; and the magistrate shall examine into the matter of every complaint or charge brought before him, and if, upon the confession of the party accused, or on the oath of any one or more witnesses, the party accused shall be convicted of having committed the offence charged or complained of, the party so convicted shall pay such penalty as to the magistrate shall seem fit, not more than the greatest penalty made payable in respect of such offence, together with the costs of conviction, to be ascertained by such magistrate.

#### 45. *Recovery of penalties and forfeitures.*—

And be it enacted, that all penalties, forfeitures, and other sums of money imposed awarded, or ordered to be paid by any magistrate continued or appointed under the authority of this act, and all sums of money which any person is bound to pay under any recognizance taken before a magistrate, and afterwards forfeited in case of nonpayment thereof, may be levied, with the costs of such proceedings on nonpayment, by distress and sale of the goods and chattels of the offender or person liable to pay the same, by warrant under the hand of such magistrate, and the overplus (if any) of the money so raised or recovered, after discharging with costs the penalty, forfeiture, or sum ordered to be paid, shall be returned, on demand to the party whose goods and chattels shall have been distrained; and in case any such penalty, forfeiture, or sum of money shall not be forthwith paid, it shall be lawful for such magistrate to order the party to be detained in safe custody until return can be conveniently made to such warrant of distress, unless such party shall give security, to the satisfaction of the magistrate, for his appearance at such place and time, not being more than seven days from the time of such detention, as shall be appointed for the return of the warrant of distress, and the magistrate is hereby empowered to take such security by way of recognizance or otherwise; but if upon the return of such warrant it shall appear that no sufficient distress could be had whereupon to levy the said penalty, forfeiture, or sum of money, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of the magistrate, upon the confession of the party or otherwise, that he has not sufficient goods and chattels whereupon such penalty, forfeiture, or sum of money could be levied if a warrant of distress should be issued, it shall be lawful for the magistrate, by warrant under his hand, to commit such party to some com-



mon gaol or house of correction within his jurisdiction, there to remain for any time not more than one calendar month where the sum to be paid shall not exceed five pounds, and not more than three calendar months in any case, the imprisonment to cease on payment of the sum due.

46. *Accounts to be kept of fees and forfeitures received and delivered quarterly to the receiver, and the amount thereof paid to him.*—And be it enacted, that the magistrates at each of the said Courts shall take care that one of their clerks shall, in books to be provided for that purpose, keep a full, true and particular account of all fees taken and received thereat, together with all penalties and forfeitures which shall have been recovered, levied, or received in pursuance of any adjudication, conviction, or order had or made thereat, or any process or warrant issuing therefrom, to which books of account the said receiver shall at all times have free access; and the said magistrates shall, once in every quarter of a year, cause to be delivered to the receiver an account of all such sums received, with all proper vouchers for verifying the same, and shall cause the amount of all such sums to be paid to the receiver, to be applied by him towards the expences of the said Courts except fines imposed upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, which shall be applied for the benefit of "The Police Superannuation Fund," and except also fees for the execution of summonses and warrants, which shall be applied towards defraying the charge of maintaining the police of the metropolis.

47. *Certain penalties and forfeitures recovered to be paid to the receiver. Not to extend to penalties under revenue acts.*—And be it enacted, that where by any act or acts any penalties or forfeitures or shares of penalties or forfeitures, are or shall hereafter be made recoverable in a summary manner before any justice or justices of the peace, and by such act or acts respectively the same are or shall be limited and made payable to her Majesty, or to any body corporate, or to any person or persons whomsoever, save the informer who shall sue for the same, or any party aggrieved, in every such case the same, if recovered or adjudged before any of the said magistrates, shall be recovered for and adjudged to be paid to the said receiver for the time being, and not to any other person; but this enactment shall not extend to any penalties or forfeitures recovered under any act relating to the customs, or to trade or navigation, and sued for by the direction of the Commissioners of her Majesty's Customs, which shall be paid to such person as the said Commissioners shall direct to receive the same.

48. *Forms of Information and Conviction.*—And be it enacted, that any magistrate before whom any information shall be laid in writing against any person, or before whom any person shall be convicted in respect of any offence, may cause the information and the conviction

to be drawn up according to the forms respectively given in schedule (B.) to this act annexed, or any other forms to the same effect, as the case may require: Provided always, that this enactment shall not invalidate any information or conviction laid or drawn in any other form which may be more specially suited to the case or may be provided by law; and in any information in writing, and in every conviction for an offence contrary to any statute or statutes, it shall be sufficient if the offence shall be stated in the words of the statute declaring the offence or attaching any penalty thereunto.

49. *Conviction, &c. not to be quashed for informality, &c.*—And be it enacted, that no information, conviction, or other proceeding before or by any of the said magistrates shall be quashed or set aside, or adjudged void or insufficient, for want of form, or be removed by certiorari into her Majesty's Court of Queen's Bench.

50. *Appeal to quarter sessions, 7 G. 4. c. 64.*—And be it enacted, that in every case of summary order or conviction before any of the said magistrates, in which the sum or penalty adjudged to be paid shall be more than three pounds, or in which the penalty adjudged shall be imprisonment for any time more than one calendar month, any person who shall think himself aggrieved by the order or conviction may appeal to the justices of the peace at the next general or quarter sessions of the peace to be holden for the county wherein the cause of complaint shall have arisen, provided that such person at the time of the order or conviction, or within forty-eight hours thereafter, shall enter into a recognizance, with two sufficient sureties, conditioned personally to appear at the said sessions to try such appeal, and to abide the further judgment of the justices at such sessions assembled, and to pay such costs as shall be by the last-mentioned justices awarded, and it shall be lawful for the magistrate by whom such order or conviction shall have been made to bind over the witnesses who shall have been examined, in sufficient recognizances, to attend and be examined at the hearing of such appeal, and that every such witness, on producing a certificate of his being so bound, under the hand of the magistrate, shall be allowed compensation for his time, trouble and expences in attending the appeal, which compensation shall be paid, in the first instance by the treasurer of the county, in like manner as in cases of misdemeanor under the provisions of an act passed in the seventh year of the reign of King George the Fourth, intituled "an Act for improving the Administration of Criminal Justice in England"; and in case the appeal shall be dismissed, and the order or conviction affirmed, the reasonable expences of all such witnesses attending as aforesaid, to be ascertained by the Court, shall be repaid to the treasurer of the county by the appellant.

51. *Distress not unlawful for want of form.*—And be it enacted, that when any distress shall be made for any money to be levied by virtue of the warrant of any of the said magis-

trates, the distress shall not be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the information, summons, warrant of apprehension, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser from the beginning on account of any irregularity which shall be afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage by an action on the case.

52. *Plaintiff not to recover after tender of amends.*—And be it enacted, that no plaintiff shall recover in any action for an irregularity, trespass, or other wrongful proceeding, made or committed in the execution of this act, or in, under, or by virtue of any power or authority hereby given, if tender of sufficient amends shall have been made, by or on behalf of the party who shall have committed such irregularity, trespass, or other wrongful proceeding, before such action brought; and in case no tender shall have been made it shall be lawful for the defendant in any such action, by leave of the court where such action shall depend, at any time before issue joined, to pay into court such sum of money as he shall think fit, whereupon such proceeding, order, and adjudication shall be had and made in and by such court as in other actions where defendants are allowed to pay money into court.

53. *Limitation of actions.*—And be it enacted, that no action, suit, or information, or any other proceeding of what nature soever, shall be brought, commenced or prosecuted against any person for any thing done or omitted to be done in pursuance of this act, or in the execution of the powers or authorities under this act, unless twenty days previous notice in writing shall be given by the party intending to commence and prosecute such suit, information, or other proceeding to the intended defendant, nor unless such action, suit, information or other proceeding shall be brought or commenced within three calendar months next after the act committed, or in case there shall be a continuation of damage then within three calendar months next after the doing or committing such damage shall have ceased, or unless such action, suit or information shall be laid and brought in the county of Middlesex; and if the plaintiff shall become nonsuited, or shall suffer a discontinuance of his suit, information, or other proceeding after the defendant shall have appeared thereto, or if a verdict shall pass against the plaintiff thereon, or if upon demurrer or otherwise judgment shall be given against the plaintiff, the defendant shall have his costs as between attorney and client, and shall have such remedy for recovering the same as defendants have for recovering costs of suit by law in other cases.

54. *Commencement of act. Repeal of former acts:* 3 & 4 W. 4, c. 19. 7 W. 4, & 1 Vict. c. 37.—And be it enacted, that this act shall take effect upon the day next after the day of the passing thereof; and that as soon as this act shall take effect an act passed in the

third year of the reign of King William the Fourth, intituled "an Act for the more effectual administration of the office of a justice of the peace in and near the metropolis, and for the more effectual prevention of depredations on the river Thames and its vicinity, for three years;" and also an act passed in the first year of the reign of her present Majesty, intituled "an Act to continue until the first day of July one thousand eight hundred and thirty eight, and from thence until the end of the then next session of parliament, an act for the more effectual administration of the office of a justice of the peace in and near the metropolis," shall cease and determine, except as to any offences which may have been committed against any of the said acts before the commencement of this act, and as to any penalties which may have been incurred under any of the said acts before the commencement of this act, which offences shall be dealt with and punished, and the penalties recovered, as if this act had not been passed, and except also as to any matters done by any persons under the authority of any of the said acts before the commencement of this act, with respect to which every privilege and protection given to such persons by any of the said acts shall continue in force as if this act had not been passed.

55. *This act to be construed with* 10 G. 4, c. 44. 2 & 3 Vict. c. 47.—And be it enacted, that this act and an act passed in the tenth year of the reign of King George the Fourth, intituled "An Act for improving the police in and near the metropolis," and also an act passed in the present session of parliament, intituled "an Act for further improving the police in and near the metropolis," shall be construed together as one act.

56. *Certain provisions of this act not to extend to the laws of customs, excise, stamps, and taxes, or post office.*—Provided always, and be it enacted, that in any proceedings under any act or acts relating to the customs, excise, stamps, taxes, or post office, nothing herein contained shall extend to prevent any penalties awarded by any one of the said magistrates from being recovered and adjudged to be paid as if this act had not been passed, or to give any appeal from any conviction under any such act or acts where such appeal is not given by the act or acts specially relating thereunto.

57. *Act may be amended this session.*—And be it enacted, that this act may be amended or repealed by any act to be passed in this present session of parliament.

## SCHEDULES

To which the foregoing Act refers.

### SCHEDULE (A.)

TABLE OF FEES.		s.	d.
For every summons . . . . .		2	0
For every warrant (except warrants of distress) . . . . .		2	0
For backing a warrant . . . . .		1	0
For every recognizance to appear before magistrate or to take trial . . . . .		2	6

For every recognizance to keep the peace or to be of good behaviour . . .	2	0
For every supersedeas . . .	3	0
For every warrant of distress . . .	3	0
For every declaration, except those relating to lost duplicates of articles under 20s., and except those made for the use of public offices or departments or for charitable purposes . . .	1	0

## SCHEDULE (B.)

## FORM OF INFORMATION.

*Metropolitan Police District.* } Be it remembered, that  
to wit. } A. B. of in the  
on the day of in the year of  
our Lord before me J. P., one of the  
magistrates of the police courts of the metropolis, sitting at the police court at  
within the Metropolitan Police District, and  
giveth me to understand and be informed that  
C. D. hath been guilty of [*here describe the offence.*]

## FORM OF CONVICTION.

*Metropolitan Police District.* } Be it remembered, that on  
to wit. } the day of  
in the year of our Lord  
C. D. is brought before me J. P., one  
of the police magistrates of the metropolis,  
sitting at the police court in within the  
Metropolitan Police District and is  
charged before me with having [*here describe the offence*]; and it appearing to me upon the  
confession of the said C. D. [*or upon the oath of a credible witness, as the case may be*], that  
the said C. D. is guilty of the said offence, I do  
therefore adjudge the said C. D. [*insert the adjudication*]. Given under my hand the day  
and year first above written.

SELECTIONS  
FROM CORRESPONDENCE.

## JURISDICTION OF LOCAL COURTS.

To the Editor of the *Legal Observer*.  
Sir,

HAVING lately sent a summons to Bath, indorsed to recover a sum somewhat under 10*l.*, I was surprised to learn that my client was deprived of his costs by the operation of the local act.

This anomaly is the more extraordinary, as the existing act for the recovery of debts in the borough of Southwark and the vicinity, expressly preserves the jurisdiction of the Superior Courts in all cases where the debts exceed 40*s.*

I submit the propriety of an application to the legislature, preserving an uniformity throughout the kingdom, by repealing all clauses in local acts prohibiting the recovery of costs in such cases. L.

## EXAMINATION TESTIMONIALS.

Being a candidate for admission at the next Michaelmas Term Examination of attorneys, I beg to trouble you with a question, with

which I shall be glad to be favoured with your opinion. My articles expired above a year ago, and since that time I have been engaged in a solicitor's office, both in town and in the country, for the sake of getting a better knowledge of my profession. I have never yet been able to learn (although I have made repeated searches for the information) what proof is required of the clerk having been employed during that time in the business of an attorney. Is a certificate from one of the clerks in the office sufficient, or must it be from the attorney himself?

## A CONSTANT READER.

[The 5th question to be answered both by the attorney and clerk is:—"Whether since the expiration of the articles, the clerk has been engaged or concerned, and for how long time, in any and what profession, trade, business, or employment, other than the profession of an attorney or solicitor?" If the clerk should have remained with the attorney to whom he was articulated, such attorney will be of course the proper person to answer the question *positively*; if not, he should answer to the best of his information and belief. We are not aware that any other evidence is required. Ed.]

INTEREST OF MARRIED WOMEN.  
3 & 4 W. 4, c. 74.

A., seised of freeholds of inheritance, by will duly executed, devised same to trustees, upon trust to pay the rents to his wife for life, after her decease to sell the same as therein mentioned, and to divide the produce among his three children equally, two of whom were married daughters; and the testator directed that their receipts alone should be good discharges for such produce. The will also contained a direction that although the monies to be produced from such sale would not be payable till after his wife's death, the same should be vested interests immediately upon *his* death. The testator died, without revoking or altering his will, leaving his wife and children surviving. One of the daughters being about to raise a sum of money on an assignment of her interest under the will, in which security her husband joins—a doubt has arisen whether this is such an *estate or interest* as will require an acknowledgment under the 3d and 4th William 4th, c. 74 to pass it effectually from the husband and wife, and vest it in the assignee. I think it seems quite clear, that it is not such an interest as a fine might have been levied of, before their abolition by the above statute, for a fine could not be levied even of money directed to be laid out in land, which in equity is considered *as land*, until the investment was *actually made*; and though a fine might have been levied of a *reversion or remainder*, or of a *right in futuro* (3 Rep. 90) still, in this case, the *fee* being vested in the *trustees the parties entitled to the money are never entitled to an estate in the land*. But a *recovery* might have been suffered of a *trust estate by a cestui que trust* (1 P.Wms. 90 & 91.) By section 1 of the act for the

abolition of fines and recoveries (3 & 4 Wm. 4, c. 74) the word "estate" is to be construed to extend to "an estate in equity as well as at law," and also "to any interest, charge, lien, or incumbrance, in, upon, or affecting lands either at law or in equity." And by sec. 77 of that statute a married woman is entitled "by deed to dispose of lands of any tenure," and to "*dispose of, release, surrender, or extinguish any estate which she alone, or she and her husband in her right, may have in any lands of any tenure,*" "as fully and effectually as she could do if she were a feme sole;" but the husband must concur and the deed be acknowledged according to the provisions of the statute, and of course under this clause she may mortgage her estate, which is a *conditional* disposition thereof within the power of a feme sole.

Upon the whole of the case I incline to the opinion that it would be *prudent*, if not necessary, to have the instrument acknowledged in the usual way. And as it is a case which in all probability may frequently occur again to some of us, I should feel obliged if either you, Mr. Editor, or some of your intelligent correspondents, would supply the information desired, namely, whether it is necessary or not to resort to an acknowledgment of the deed by the wife, or whether a simple assignment by husband and wife, or by the wife only, would be sufficient to secure the lender the repayment of his principal and interest.

STUDIOSUS.

## LIST OF THE STATUTES, 2 & 3 VICT.

### PUBLIC GENERAL ACTS.

[Concluded from page 459.]

32. An act to continue, until the end of the session of Parliament next after the thirty-first day of May one thousand eight hundred and forty-one, certain of the allowances or the duty of excise on soap used in manufactures.

33. An act to indemnify such persons in the united Kingdom as have omitted to qualify themselves for offices and employments, and for extending the time limited for those purposes respectively until the twenty-fifth day of March one thousand eight hundred and forty; and for the relief of clerks to attornies and solicitors in certain cases.

34. An act to confirm certain rules and orders of the Supreme Courts of Judicature at Fort William and Madras; and to empower the same Courts, and the Supreme Courts of Judicature of Bombay, to make rules and orders concerning pleadings.

35. An act to continue, for one year, compositions for assessed taxes, and to alter the period for the expiration of game certificates, and for granting licences to deal in game.

36. An act to regulate the duties to be performed by the judges in the supreme courts of Scotland, and to increase the salaries of certain of the said judges.

37. An act to amend, and extend until the

first day of January one thousand eight hundred and forty-two, the provisions of an act of the first year of her present Majesty for exempting certain bills of exchange and promissory notes from the operation of the laws relating to usury.

38. An act to amend the jurisdiction for the trial of election petitions.

39. An act to amend an act passed in the last session of Parliament, for abolishing arrest on mesue process in civil actions except in certain cases, for extending the remedies of creditors against the property of debtors, and for amending the laws for the relief of insolvent debtors in England.

40. An act for procuring returns relative to the highways and turnpike roads in England and Wales.

41. An act for regulating the sequestration of the estates of bankrupts in Scotland.

42. An act to improve prisons and prison discipline in Scotland.

43. An act to suspend until the end of the next session of Parliament the making of lists and the ballots and enrolments for the militia of the United Kingdom.

44. An act to prevent until the end of the next session of Parliament, ships clearing out from a British North American port loading any part of their cargo of timber upon deck.

45. An act to amend an act of the fifth and sixth years of the reign of his late Majesty King William the fourth relating to Highways.

46. An act to authorise the trustees of turnpike roads to reduce the scale of tolls payable for overweight.

47. An act for further improving the Police in and near the Metropolis.

48. An act to amend two acts of the third and fourth and fourth and fifth years of his late Majesty King William the Fourth, for consolidating and amending the laws relative to juries and juries in Ireland.

49. An act to make better provision for the assignment of ecclesiastical districts to churches or chapels augmented by the Governors of the bounty of Queen Anne; and for other purposes.

50. An act to extend and amend the provisions of the acts for the extension and promotion of public works in Ireland; and for the recovery of public monies advanced for the use of counties, parishes, and other districts in Ireland on the faith of grand jury presentments and parochial assessments.

51. An act to regulate the payment and assignment in certain cases of pensions granted for service in her Majesty's army, navy, royal marines, and ordinance.

52. An act for the further regulation of the duties on postage until the fifth day of October one thousand eight hundred and forty.

53. An act to amend an act of the last session of parliament for making temporary provision for the government of Lower Canada.

54. An act to amend the law relating to the custody of infants.

55. An act to suspend, until the first day of August one thousand eight hundred and forty

certain cathedral and other ecclesiastical preferments, and the operation of the new arrangement of dioceses upon the existing ecclesiastical courts.

56. An act for the better ordering of prisons.

57. An act to continue, until six months after the commencement of the next session of parliament, an act of the last session of parliament, for authorising her Majesty to carry into immediate execution by orders in council any treaties for the suppression of the slave trade.

58. An act to make further provision for the administration of justice, and for improving the practice and proceedings in the courts of the Stannaries of Cornwall; and for the prevention of frauds by workmen employed in mines within the county of Cornwall.

59. An act for taking away the exemption, except in certain cases, of officers of the militia to serve as sheriff.

60. An act to explain and extend the provisions of an act passed in the first year of his late Majesty King William the Fourth, intituled "An act for consolidating and amending the laws for facilitating the payment of debts out of real estate."

61. An act for the improvement of the navigation of the river Shannon.

62. An act to explain and amend the acts for the commutation of tithes in England and Wales.

63. An act to remove doubts as to the charging the duty of excise on hard soap, until the eleventh day of October, one thousand eight hundred and forty.

64. An act to defray the charge of the pay, clothing and contingent and other expences of the disembodied militia in great Britain and Ireland; and to grant allowances in certain cases to subaltern officers, adjutants, paymasters, quartermasters, surgeons, assistant surgeons, surgeons' mates, and serjeant majors of the militia, until the first day of July one thousand eight hundred and forty.

65. An act to amend the mode of assessing the rogue money in Scotland, and to extend the purposes of such assessment.

66. An act to reduce certain of the duties now payable on stage carriages.

67. An act to amend an act of the fifth and sixth years of the reign of King William the Fourth, intituled "an act to amend the law touching letters patent for inventions."

68. An act to continue until the thirty first day of August one thousand eight hundred and forty, an act of the first and second years of her present Majesty, relating to legal proceedings by certain joint stock banking companies against their own members, and by such members against the companies.

69. An act to authorise the purchase or building of lodgings for the judges of assize on their circuits.

70. An act to amend an act of the ninth year of King George the Fourth, to provide for the administration of justice in New South Wales and Van Diemen's Land, and for the more effectual government thereof, and for

other purposes relating thereto; and to continue the same until the thirty-first day of December one thousand eight hundred and forty, and thenceforward to the end of the then next session of Parliament.

71. An act for regulating the police courts in the metropolis.

72. An act for enabling justices of assize and nisi prius,oyer and terminer, and gaol delivery, to hold courts for counties at large in adjoining counties of cities and towns, and conversely.

73. An act for the suppression of the slave trade.

74. An act to extend and render more effectual for five years an act passed in the fourth year of his late Majesty George the Fourth, to amend an act passed in the fiftieth year of his Majesty George the Third, for preventing the administering and taking unlawful oaths in Ireland.

75. An act for the better regulation of the constabulary force in Ireland.

76. An act to restrain the alienation of corporate property in certain towns in Ireland until the first day of September one thousand eight hundred and forty.

77. An act for the better prevention and punishment of assaults in Ireland for five years.

78. An act to make further provisions relating to the Police in the district of Dublin metropolis.

79. An act for the better prevention of the sale of spirits by unlicensed persons in Ireland.

80. An act to empower the commissioners of her Majesty's woods, forests, land revenues, works, and buildings to raise a sum of money for making additional thoroughfares in the Metropolis.

81. An act to authorise for one year, and from thence to the end of the then next session of Parliament, the application of a portion of the highway rates to turnpike roads in certain cases.

82. An act for the better administration of justice in detached parts of counties.

83. An act to continue the poor law commission until the fourteenth day of August one thousand eight hundred and forty, and thenceforth until the end of the then next session of parliament.

84. An act to amend the laws relating to the assessment and collection of rates for the relief of the poor.

85. An act to enable justices of the peace in petty sessions to make orders for the support of bastard children.

86. An act to amend an act passed in the session holden in the sixth year of his late Majesty King William the Fourth, for amending the laws relating to bankrupts in Ireland.

87. An act for improving the police in Manchester for two years, and from thence until the end of the then next session of Parliament.

88. An act for improving the police in Birmingham for two years, and from thence until the end of the then next session of Parliament.

89. An act to apply a sum out of the consolidated fund, and the surplus of ways and means, to the service of the year one thousand eight hundred and thirty nine, and to appropriate the supplies granted in this session of Parliament.

90. An act for raising the sum of twelve millions twenty six thousand and fifty pounds by Exchequer Bills, for the service of the year one thousand eight hundred and thirty nine.

91. An act to continue, until the first day of January one thousand eight hundred and forty one, an act of the last session of parliament relating to the Bank of Ireland.

92. An act to explain and amend an act of the first and second years of her present Majesty, so far as relates to fines and penalties levied under the revenue laws in Ireland.

93. An act for the establishment of county and district constables by the authority of justices of the peace.

94. An act to exempt the parliamentary grant to the heirs of John Duke of Marlborough from the payment of the duty of one shilling and sixpence in the pound.

95. An act for improving the police in Bolton for two years, and from thence until the end of the then next session of Parliament.

96. An act to authorize her Majesty, until six months after the commencement of the next session of parliament, to carry into effect a convention between her Majesty and the King of the French relative to the fisheries on the coasts of the British Islands and of France.

97. An act for funding Exchequer bills.

8. An act for providing a market place, and for regulating the markets and fairs, in the town and borough of Bury in the county palatine of Lancaster.

9. An act to amend an act of the seventh and eighth of King George the Fourth, for building a new gaol for the town of Cambridge, and for making further provision for payment of creditors under the said act.

10. An act for the more effectual drainage of certain lands called the Fen and Dales of Timberland and Timberland Thorpe, in the parish of Timberland in the county of Lincoln.

11. An act to enable the Rhymney Iron Company to erect and endow a church in the parish of Bedwelty in the county of Monmouth.

12. An act for making a turnpike road from the town of Redruth in the county of Cornwall to and through the village of Hayle in the parish of Phillack in the same county.

13. An act for repairing the road from Cotton End near the Town of Northampton to Newport Pagnel in the county of Buckingham.

14. An act to extend, alter, and amend the powers and provisions of an act passed in the seventh year of the reign of his late Majesty King George the Fourth, relating to the New Cross Turnpike Roads in the counties of Kent and Surrey.

15. An act for repairing and maintaining the road from Worksoop to the turnpike road at Kelham, and from Debdale Hill to the Great Northern Road at South Muskham, in the county of Nottingham.

16. An act for extending, improving, regulating, and managing the Harbour of the Royal Burgh of Aberbrothwick in the county of Forfar.

17. An act for discharging the inhabitants of the manor of Leeds in the county of York from the custom of grinding corn, grain and malt at certain water cornmills in the said manor; and for making compensation to the proprietor of the said mills.

18. An act to amend and enlarge the powers and provisions of the several acts relating to the London and Croydon Railway.

19. An act for granting further powers to the London and Greenwich Railway Company.

20. An act for more effectually repairing and maintaining the road from Padbrook Bridge in the parish of Cullompton to Hazel-Stone in the parish of Broadclist, all in the county of Devon.

21. An act to alter, amend, and enlarge the powers and provisions of two several acts of the eleventh year of the reign of King George the Fourth and first year of the reign of King William the Fourth, and fourth and fifth year of the reign of King William the Fourth, for improving the port and harbour of Perth, and the navigation of the river Tay to the said city.

22. An act for more effectually repairing and improving the road from Wearmouth Bridge to Tyne Bridge, with a branch from the said road to the town of South Shields, all in the county of Durham.

**LIST OF LOCAL AND PERSONAL ACTS,  
Declared public, and to be judicially noticed,  
2 & 3 VICT.**

1. An act to amend the several acts relating to the Preston and Wyre railway and harbour company.

3. An act for effecting improvements in the streets and other places within and contiguous to the town of Manchester.

3. An act for incorporating "the Preston Gas Light Company," and for better lighting with gas or otherwise the parliamentary borough of Preston, and the townships and places therein mentioned, in the county of Lancaster.

4. An act for repairing the road from Epsom to Tooting, and other roads communicating therewith, all in the county of Surrey.

5. An act for enabling the general cemetery company to raise a further sum of money; and for amending the act relating to the said cemetery.

6. An act for the better lighting and supplying the borough of Newark in the county of Nottingham, and the neighbourhood thereof with gas.

7. An act for lighting with gas the town of Holmfirth and the neighbourhood thereof, in the west riding of the county of York.

23. An act for repairing and maintaining the road from the town of Rugby to the borough of Warwick, all in the county of Warwick.

24. An act to consolidate, amend, enlarge, and extend the powers and provisions of two acts of King George the Third, for better supplying the town and neighbourhood of Rochdale with water.

25. An act for enabling the Cheltenham Waterworks Company to enlarge and extend their works, and for amending the act relating thereto.

26. An act for enabling the company of proprietors of the Herefordshire and Gloucestershire canal navigation to raise a further sum of money, and for amending the acts relating thereto.

27. An act to amend the acts relating to "the Great Western Railway;" and to raise a further sum of money for the purpose, of the said undertaking.

28. An act to amend the acts relating to the London and Southampton Railway Company, hereafter to be called "the London and South-Western Railway Company," and to make a Branch Railway to the Port of Portsmouth.

29. An act for repairing, improving, and maintaining the roads from Clithero, through Whalley, to Blackburn and Mellor Brook in the county palatine of Lancaster, and for making a new piece of road to communicate therewith.

30. An act for making a turnpike road from Morville to Shipton, with a branch to Brocton, and another branch from Brocton to Easthope's Cross, all in the county of Salop.

31. An act for repairing, improving, and maintaining the roads from Bury, through Haslingden, to Blackburn and Whalley, and other roads communicating therewith, in the county palatine of Lancaster.

32. An act for repairing and maintaining the road from Leeds through Harewood, to the South-west corner of the inclosures of Harrogate in the west-riding of the county of York.

33. An act for repairing the road from Dover in the county of Kent, through Deal, to Sandwich in the said county.

[To be continued.]

## SUPERIOR COURTS.

### Lord Chancellor's Court.

#### COSTS.—NEXT OF KIN.

*In a suit for the administration of an intestate's estate, some of his next of kin, not parties to the cause, went before the Master under the usual decree, and proved their pedigree and title: Held, that they were entitled to their costs out of the estate.*

Sir Charles Wetherell moved in behalf of certain next of kin of an intestate, that their costs of proving their pedigree and title as next of kin before the Master may be allowed to them out of the intestate's estate. This was

an administration suit, and a decree of reference to the Master to make the usual inquiries was made, whereupon the parties on whose behalf this motion was made went in before the Master, and proved themselves to be next of kin to the intestate. Having done so they were entitled to their costs as well as if they were parties to the cause. *Bennett v. Wood.*<sup>a</sup>

Mr. Wakefield, for some of the next of kin who were parties to the cause, opposed the motion, and contended that next of kin, not parties to the cause, must establish their purpose at their own expence. *Waite v. Waite.*<sup>b</sup>

Mr. Richards, Mr. Smith, Mr. Webster, and other counsel for different parties in the same interest, joined the opposition to the motion.

The Lord Chancellor said he would allow the costs. It would be very inconvenient to make a rule that all the next of kin should be parties to the cause, in which case they would all be, no doubt, entitled to their costs out of the intestate's estate. The best course would be to follow the rule of costs of next of kin parties to the cause, and give the other next of kin not parties, having established their title, their costs of doing so as well as if they were parties.

*Hutchinson v. Freeman*, Sittings at Lincoln's Inn. July 20th, 1839.

### Vice Chancellor's Court.

#### DONATIO MORTIS CAUSA.—TRUST.—JURISDICTION.

*A. delivered a box to B. in 1837, saying, "at my death, get the key from C. out of the iron chest, and if C. does not give it, break the box; it contains money &c., it is for yourself after I am gone, but I shall want it from you every three months while I live." A. had the box sometimes from B. and returned it to her. On his death in 1838, she broke the box, C. refusing to give the key, and found a bill of exchange, payable to A. or bearer. Held in demurrer to B.'s bill against C., and the drawer of the bill of exchange, that the delivery of the box was not a donatio mortis causa, nor such a trust as the court would enforce.*

Mr. John Dobree, a retired Silversmith lived at Brixton in 1837, and up to his death in 1838. He was a widower, having a son and daughter, but they did not live with him. Among his friends he reckoned the plaintiff Charlotte Reddel, and her sister, Alison Kyle Riddel, both of whom lived in or near Brixton. About September 1837, Mr. Dobree through the defendant, Mr. Vaughan, who had been his partner, and owed him some money, got a small cash box made with a Bramah lock to it, and a bone label attached to the key, with the plaintiff's name upon it. On the 10th of September 1837, he delivered the box to the plaintiff, using these words, "at my death go to my son, and ask him for the key, which will be found in the iron chest; if he will not give it up, take the box to Mr. Vaughan, and he will

<sup>a</sup> 7 Sim. 522.

<sup>b</sup> 6 Madd. 110.

break it open; it contains money, take care of it, it will make hundreds difference to you; it is for yourself and your sister, and entirely at your disposal after I am gone, but I shall want it from you every three months while I live."

The plaintiff then did not exactly know the contents of the box, and upon Mr. Vaughan asking her afterwards, did she not wish to know what the old gentleman had left her, she declined making any inquiry upon the subject. In December 1837, Mr. Dobree called upon the plaintiff in his carriage, on his way to town, and took the box with him, and brought it back to her the same day. In March 1838, he called again, and left word for her to bring the box to his house, which she did, and a few days after the box was returned. On the 1st of June 1838, Mr. Dobree died, having made a will, by which he left the iron chest to his son, the defendant, John Robert Dobree, his residuary legatee. The plaintiff applied to him for the key, which he refused to give up. The plaintiff had then the box broken open, when within it were found two envelopes, one directed to the plaintiff, containing the defendant Vaughan's draft on Ransom & Co., for 500*l.*, payable to John Dobree, or bearer; the other a similar draft for 200*l.*, for the plaintiff's sister, and both dated London, April 2, 1838. The drafts were presented, but payment refused, and the plaintiff thereupon filed her bill against Mr. Vaughan, the maker, and against the residuary legatee, for payment of the drafts. The bill alleged that the two drafts which were found in the box, were put in place of two similar drafts which were in the box when it was first delivered to the plaintiff, and it charged that the defendants now pretended that the drafts were illegal, as they were really made at Brixton, on the first of April which was a Sunday, and that they could not therefore be sued upon at law. The bill contained allegations, that if that were the case it was owing to a fraudulent scheme on the part of the defendant's to cheat the testator's intention to provide for the plaintiff and her sister, of which intention the defendants had been informed by the testator.

The defendants demurred to the bill.

Mr. Jacob, in support of the demurrer, contended that the bill did not show anything like a *donatio mortis causa*, which was the case set up by the bill.

Mr. Knight Bruce supported the bill.

The Vice Chancellor said he did not think there was any *donatio mortis causa*, or anything like it, in the case. It was nothing more than a gift of what might happen to be in the box at the time of Mr. Dobree's death, always however liable to be recalled. His Honor read the paragraph in the will as already stated, which described the mode in which the box was first delivered, and the subsequent deliveries which were all of the same kind. His Honor thought the testator all along meant to retain complete dominion over the box. It was a mere accident that Mr. Dobree died so short a time after the last delivery, and that could not alter the very nature and constitution of the case. At the utmost the plaintiff

held the box upon trust for the testator, and if not in favour of himself, then for the holder; but that was not a trust the Court could entertain jurisdiction of. The demurrers were allowed.

*Reddel v. Dobree and Vaughan.* Sittings at Lincoln's Inn after Trinity Term, 1839.

#### Queen's Bench.

[Before the Four Judges.]

**LIBEL.—PRIVILEGE OF PARLIAMENT.**

[Concluded from p. 462.]

That parliament enjoys privileges of the most important character, no one can doubt. Some are common to both Houses; some are peculiar to each; all are essential to the discharge of their functions. If they were not the fruit of deliberation in the *Aula regia*, they rest on the stronger ground of a necessity, which became apparent at least as soon as the two Houses took their present position in the state. Thus the privilege of having their debates unquestioned, though denied when the members began to speak their minds freely in the time of Queen Elizabeth, and punished in its exercise both by that Princess and her two successors, was soon clearly perceived to be indispensable, and was therefore universally acknowledged. By consequence whatever is done within the walls of either assembly must pass unquestioned in any other place. For speeches made in parliament by a member to the prejudice of any other person, or hazardous to the public peace, that member enjoys complete impunity. For any paper signed by the Speaker by order of the House, though to the last degree calumnious, or even if it brought personal sufferings upon individuals, the Speaker cannot be arraigned in a Court of Justice; but if the calumnious or inflammatory speeches should be reported and published, the law will attach responsibility on the publisher; so, if the speaker by the authority of the House order an illegal act, though that authority shall exempt him from question, his order shall no more justify the person who executed it than King Charles's warrant for levying ship money could justify his revenue officer.

The privilege of committing for contempt is inherent in every deliberative body invested with authority by the constitution. But however flagrant the contempt, the House of Commons can only commit till the end of the existing session. On the day after its termination every judge in Westminster Hall would be bound to discharge the offender by *habeas corpus*. Nothing is more undoubted than the exclusive privilege of the people's representatives, in respect to the grants of money and the imposition of taxes. But if their care of a branch of the revenue, should induce a vote that their messenger should forcibly enter and inspect the cellars of all residents in London possessing more than a certain income, and if some citizen should bring an action of trespass, has any lawyer yet said that the speaker's warrant would justify the breaking and entering? The Commons of England are not invested



with more of power and dignity by their legislative character than by that which they bear as the grand inquest of the nation. All the privileges that can be required for the energetic discharge of the duties inherent in that high trust are conceded without a murmur or a doubt. But if, on a resolution of guilt, voted by themselves, this grand inquest should not accuse but condemn,—should mistake the right to initiate a charge for the privilege of passing sentence and awarding execution,—will it be denied that their agent would incur the guilt of murder?

Examples might be multiplied without limit, but the examples are said to be abuses, and to prove nothing against the use. It is also urged that abuses are not to be presumed; but I answer, that cases of abuse must be presumed to test the truth of the principle now under discussion. After going through all the cases on both sides, his Lordship continued,—In truth no practical difference can be drawn between the right to sanction all things under the name of privilege, and the right to sanction all things whatever by merely ordering them to be done. The second proposition differs from the first in words only. In both cases, the law would be superseded by one assembly, and however dignified and respectable that body, and however superior to all temptations of abusing its power, the power claimed is arbitrary and irresponsible in itself, the most dangerous and intolerable of all abuses. Before I finally take leave of this head of the argument, I will dispose of the notion that the House of Commons is a separate Court, having exclusive jurisdiction over the subject-matter on which for that reason its adjudication must be final. The argument placed the house herein on a level with the Spiritual Court and the Court of Admiralty. Adopting this analogy, it appears to me to destroy the defence attempted to the present action. Where the subject-matter falls within their jurisdiction, no doubt we cannot question their judgment, but we are now inquiring whether the subject-matter does fall within the jurisdiction of the House of Commons. It is contended that they can bring it within their jurisdiction by declaring it so. To this claim, as arising from their privileges, I have already stated my answer. It is perfectly clear that none of these Courts could give itself jurisdiction by adjudging itself entitled to enjoy it.

I now come to the question whether this privilege of publication exists. The plea states the resolution of the House that all parliamentary reports printed for the use of the House should be sold to the public, and that these several papers were ordered to be printed, not, however, stating that they were printed for the use of the House. But passing over all minor objections, I assume that the defendant has properly pleaded a claim on the part of the House to authorise the indiscriminate publication and sale of all such papers as the House may order to be printed for the use of its members. The Attorney

General insists that we must not enter on this enquiry, but must merely record the judgment of the Superior Court, and register the edict which the plea brings to our knowledge. But having convinced myself that the mere order of the House will not justify an act otherwise illegal, and that the simple declaration that that order is made in exercise of a privilege does not prove that privilege, it is no longer optional with me to decline or accept the office of deciding whether such a privilege is good in law.

In the first place I must observe that the act of selling does not give the plaintiff any additional ground of action. The injury is precisely the same, whether the publication be for money or not. But the direction to sell is highly important in this respect, that public sale necessarily imports indiscriminate publication beyond recal or control, and holds out the same authority as a protection to every subordinate vendor who by purchase from their printer and bookseller is, like him, doing no more than giving effect to the order of the House. It is fit to remark, that the defamatory matter has no bearing on any question in Parliament, or that could arise there. Whether the book found in the possession of a prisoner in Newgate was obscene or decent, can have no influence in determining how prisons can best be regulated; still less could the irrelevant issue whether it was published. The most advisable course of legislation on the subject is wholly unconnected with those facts. And if the ascertainment of them by the House was a thing indifferent, still less could the publication of them to the world answer any one parliamentary purpose. The proof of this privilege was grounded on three principles—necessity, practice, and universal acquiescence. If the necessity can be made out, no more need be said. It is the foundation of every privilege of Parliament, and justifies all that it requires. But the promise to produce that proof ended in complete disappointment. It consisted altogether in first adopting the doctrine that printing for the use of the members is lawful, and then in rejecting the limitation which restricts it to their use. One ground for the necessity of publishing for sale all the papers printed by the House of Commons, was that members might be able to justify themselves to their constituents when their conduct in Parliament is arraigned, appealing to documents printed by authority of the House. That is precisely the principle denied and condemned by Lord *Ellenborough* and the Court in *Rea v. Creery*;\* and, indeed it is scarcely possible for ingenuity to fancy a case in which a member accused of any misconduct in his trust should be able to vindicate himself by resorting to such documents. Then as to the practice, no vestiges of it are tracked to a period earlier than 1640, a fact which disproves the antiquity of the privilege, and its necessity; for no such necessity was thought of till one of the three estates began to struggle

\* 1 Maule & Selw. 372.

against the other two for an ascendancy, which reduced them to nothing. The practice of a ruling power in the state is but a feeble proof of its legality. A practice had existed with regard to ship money and to general warrants, but when respectively brought by Hampden and Wilkes to the test of a legal enquiry they were found to be incapable of being supported as legal. This too is the answer to the argument as to the alleged acquiescence.

Upon the whole case I am of opinion that the defence pleaded is no defence in law, and that our judgment must be for the plaintiff on this demurrer.

Mr. Justice *Littleale* expressed his concurrence with Lord *Denman* in a judgment of considerable length and elaborateness.

Mr. Justice *Patteson* also concurred. In the course of his judgment he said, I admit that the House of Commons, being one branch of the legislature, to which legislature belongs the making of laws, is superior in dignity to the courts of law, to whom it belongs to carry those laws into effect; and in so doing, of necessity, to interpret and ascertain their meaning. It is superior also in this, that it is the grand inquest of the nation, and may enquire into all alleged abuses and misconduct in any quarter, of course in the courts of law or any of the members of them. But it cannot of itself correct or punish any such abuses or misconduct. It can but accuse or institute proceedings against the supposed delinquents, in some court of law, or conjointly with the other branches of the legislature, may remedy the mischief by a new law. With respect to the interpretation and declaration of what is the existing law, the House of Lords is doubtless a superior court to the courts of law. And those courts are bound by a decision of the House of Lords, expressed judicially upon a writ of error or appeal in an action at law, or in a suit in equity. But I deny that a mere resolution of the House of Lords, or even a decision of that House in a suit originally brought there, would be binding upon the Courts of law, even if accompanied by a resolution that the House had power to entertain original suits: much less can a resolution of the House of Commons, which is not a Court of Judicature for the decision of any question either of law or fact between litigant parties except in regard to the election of its members, be binding upon the Courts of Law. And it should be observed that in making this resolution the House of Commons was not acting as a Court legislative judicial, or inquisitorial. It seems to me, therefore, that the superiority of the House of Commons has really nothing to do with the question. When referring to that part of the argument in which the question was put as to what was to be done with the papers that had in the course of his being a member of the House come into the possession of any individual, and was in his possession at the time of his death or resignation, his Lordship said, The answer is obvious: the copy of such defamatory matter ought to be destroyed, as it can no longer be used for the purpose for which it was intended.

His Lordship then continued.—It is said to be necessary, in order to obtain the requisite information for the members in any legislative or inquisitorial measure. This ground is not tenable. The House is armed with ample power to send for all persons who can give information, either before a Committee, or at the bar of the House. It can never be necessary to sell indiscriminately to every body, in order to take the chance of some person volunteering information to the House. Will it be said that any one ever did volunteer information in consequence of such publication by the House, or that the House ever waited and paused in its deliberations, or its votes, in order to see whether any one would so volunteer. It is not pretended that such has been the fact. Whether any individual member might or might not be justified in communicating to some person out of the House, defamatory matter printed for the use of the House, I cannot pretend to say. Probably upon any such question arising, the decision will lie with a jury, but I would by no means bind myself to any opinion on that subject. This is the case of an open sale to all who choose to buy, not justified by any peculiar circumstances attending this case above others.

Where there is the necessity for this power, privileges—that is, immunities and safeguards,—are necessary for the protection of the House of Commons in the exercise of its high functions. All persons ought to desire to preserve to the House all privileges which may be necessary for the exercise of those functions, and to place the most implicit confidence in their representatives as to the due exercise of those privileges. But power, and especially the power of invading the rights of others, is a very different thing—it is to be regarded with jealousy, and unless its legality is clearly established, those who act under it must be answerable for the consequences. The *onus* of shewing the existence and the legality of the power now claimed lies on the defendant. This has not been done, and I am therefore of opinion that the plaintiff is entitled to judgment.

Mr. Justice *Coleridge* concurred.—Referring to the distinction taken by Mr. Justice *Patteson*, he said, I apprehend that the question of privilege arises directly wherever the House has adjudicated upon the very fact between the parties, and there only. Wherever this appears, and the case may be one of privilege, no Court ought to enquire whether the House has adjudicated properly or not; but whether directly arising or not, a Court of Law, I conceive, must take notice of the distinction between privilege and power, and where the act has not been done within the House (for of no act there done can any tribunal, in my opinion, take cognizance but the House itself) and is clearly of a nature transcending the legal limits of privilege, it will proceed against the doer as a transgressor of the law. His Lordship also denied the privilege to be claimed rightfully, on the ground of the necessity of the House giving instruction to the public upon public matters, observing that this argument could

not be used for a body whose most undoubted and exercised privilege was that of excluding strangers from its debates.

Judgment for the plaintiff.—*Stuchdale v. Hansard*, T. T. 1839. Q. B. F. J.

### Common Pleas.

#### ENTERING VERDICT DISTRIBUTIVELY.

*In an action of trespass qu. cl. fr. the defendant set up a general right to cross the land at all times, and for all purposes. The jury found a limited right at certain times and for certain purposes only: Held, that the finding could not be entered distributively under the new rules.*

*Stephen, Serjt., B. Andrews and Palmer*, shewed cause against a rule obtained by *Kelly* for entering up a verdict in this case under the following circumstances:—It was an action of trespass *quare clausum fregit*. The defendant pleaded, first, Not Guilty; and secondly, a general right of way by prescription over the land, in respect of the defendant's ownership of a certain wood, called King's Hall Wood, at all times, with carts, carriages, and horses. The cause was tried before *Littledale, J.*, at the Suffolk Summer Assizes, and the jury found a verdict for the plaintiff on the first issue, and also upon two others, upon which no point now arose; and as to the second issue they found a limited right of way for the defendant, at particular times of the year and for particular purposes. The plaintiff therefore contended that this was a substantial finding in his favour, while the defendant urged that he was, at all events, entitled to have the verdict entered distributively for him under the new rules. *Littledale, J.*, took the verdict from the jury, and the present rule was in consequence obtained, in order that its effect might be determined. It was now urged that the verdict was a general finding for the defendant, and that he was entitled to have it entered accordingly. It affirmed the general subject of the plea, *viz.* the right of way, and although there was no proof that the particular trespass alleged was committed in the exercise of that right, yet it would be justified by it, for in all cases where there appeared to be variance between the prescription alleged and that found, it went to the merits. The proof given, at all events, shewed that the plaintiff had no right of action. [*Per Curiam*.—The defendant cannot succeed on that argument; otherwise it would always appear that the defendant had substantiated a more general right than that found.] The cases of *Tupley v. Wainwright*, 5 B. & A. 395; *Barrington v. Barrington*, Cro. Eliz. 157; *Moreton v. Wood*, 4 T. R. 157; *Ballard v. Dyson*, 1 Taunt. 279; and *Cowling v. Higginson*, 4 M. & W. 256, were referred to. It was then contended that the plea might be taken distributively (*Knight v. Woone*, 3 Bing. N. C. 296), and urged that upon the construction to be put upon the rules of H. T. 4 W. 4, ss. 4, 5, & 6, this might be done. It would not be any hardship on the plaintiff who might have new assigned.

*Kelly and Gunning*, in support of the rule,

urged that the case of *Drewell v. Towler*, 3 B. & A. 735, was decisive on the first point. Upon the other question, the verdict could only be entered distributively when something was found by the jury which was alleged in the plea. Here, however, the limited right found was not attended to at all. It would be necessary to amend the record before the verdict could be entered as it was contended it should be.

*Per Curiam*.—This is a general plea claiming a general right of way for all purposes and at all times. The jury have found only a limited right, and I think that we cannot enter the verdict as it is desired by the defendant. We might enter it distributively, indeed, if the effect of doing so were to limit and restrain what is on the record, but it would not be so; but, on the contrary, it would be to add and import something into it which is new.

The rule was made absolute for the defendant to amend his plea, and for the plaintiff to amend his replication, the defendant being at liberty to go down to trial on the second issue only.

Rule accordingly.—*Higham v. Rabbett*, T. T. 1839. C. P.

### Exchequer of Pleas.

#### DATE OF SUMMONS.

*A summons taken out at chambers need not state the day of the year; the specification of the day of the month is sufficient.*

*Petersdorff* shewed cause against a rule which had been obtained in this suit to set aside the interlocutory judgment signed by the plaintiff, on the ground of irregularity. The time for pleading, it appeared, expired on the 31st May 1839. On the 30th of that month a summons was taken out for further time, but the date was "the 30th May 183," the figure "9" in the date of the year being omitted. On the 31st a second summons was taken out, returnable on the 1st June, but the plaintiff treated it as a nullity, and signed the judgment which it was now sought to set aside.

*Parke, B.*—The rule must be absolute. The question turns on the validity of the first summons. In such a document the year need not be specified, the day of the month is all that it is requisite to state.

Rule absolute.—*Solomon v. Nainby*, T. T. 1839. Excheq.

### THE EDITOR'S LETTER BOX.

We shall, as suggested, prepare a full Index to the whole of the volumes of the Legal Observer. Next year will complete our tenth year and the twentieth volume of the work.

The letter of "An Old Subscriber," on the Mode of Examining Articled Clerks, shall appear next week.

The Legal Almanac and Diary for 1840 will be published next Saturday.

The communication of N. S. will probably appear in our next.

# The Legal Observer.

SATURDAY, OCTOBER 26, 1839.

— " Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.

HORAT.

## THE CLOSE OF THE VACATION.

THE Long Vacation is now about to close, and the legal session, 1839 — 1840, to commence. Each day adds to the stock of lawyers in town, and next week we shall hardly find a vacancy in the ranks. In the absence of any positive news, the town has lately been amused with abundance of rumours. The most startling of these was, that Lord Brougham had died suddenly, which for some *hours obtained credence* in some quarters. It soon turned out to be without foundation. We are happy to say that he is in vigorous health, and we look upon it, that his ten next years may be the very best in his life, so far as exertion is concerned. As an orator, in our opinion, he ranks higher than ever he did; retaining all his pristine raciness, his style is more mature and deliberate, and in delivery he is now perfect. We have never scrupled during the last nine years, boldly to proclaim him in the wrong, when we thought him to be so, and we shall do so again without hesitation, if necessary; but we need hardly say, how much greater pleasure it gives us to offer our humble meed of praise to a man whom all must admire, and whose long life all must wish.

At the beginning of the term, we shall probably know who is to be the new Judge, or perhaps Judges; for it is said that Mr. Justice Littledale is desirous of retiring. One report sends the Attorney General to Ireland as Chancellor, and in exchange raises some un-named Irish barrister to the English Bench. We merely notice this to express our conviction that it can never have been seriously entertained. It was at one time proposed to make Lord Plunket Master

of the Rolls in this country; but it was properly resisted by the Bar here, and was not persisted in. We are not sure that the Irish Bar has not some right to complain that their best prize is so frequently carried off by one who has not borne the heat and toil of the day in that country; but if this be wrong, let the practice be discontinued; we protest against giving them their revenge by raising one of their body to the Bench here; indeed, we doubt whether it could, in point of form, be done; and it is to be remembered that the choice among the Irish bar for their Chancellorship is limited, being confined to the Protestant members. The Solicitor General has been visiting his constituents, as he declares, without any other reason than "the love he bears them."

With the commencement of business the old grievance will be revived, of the Equity and Common Law arrears. Of these our readers will be able to judge for themselves, as in our next Number we shall devote some space to a complete set of "cause lists" in all the courts. The Lord Chancellor is to bring forward in the next session of parliament his plan of Chancery Reform, and we have heard a rumour of an intended commission to be appointed, to inquire into the state of the courts of Equity and Bankruptcy. It is quite certain that things cannot go on as they are, as we shall soon be able to show, when we have the full materials.

In our recent Numbers we have endeavoured to bring the several subjects which have engaged our attention in the present volume to a close. In our next volume many other matters will demand, and shall receive our attention.

ON THE  
LIABILITY OF A SHAREHOLDER  
IN A JOINT-STOCK COMPANY.

WHERE, in an action for goods supplied for the purpose of working a mine, it appeared that the defendant had paid money for certain shares, and received a certificate that she was a proprietor of those shares, and that she had acknowledged that she was a shareholder, but no assignment of any interest in the mine had been made to her: it was held that the action could not be maintained. *Vice v. Lady Anson*, 7 B. & C. 409. So, also, where it was in contemplation to form a company for distilling whiskey, the following prospectus was issued in May 1825: "The conditions upon which this establishment is formed are, the concern will be divided into twenty shares of 100*l.* each, five of which to belong to A. B. the founder of the works, the other fifteen subscribers to pay in their subscription to M. & Co., bankers, Liverpool, in such proportions as may be called for. The concern to be under the management of a committee of three of the subscribers, to be chosen annually on the 10th of October; ten per cent. to be paid into the bank on or before the 1st of June next:" it was held that this prospectus imported only that a company was to be formed, not that it was actually formed, and that a person who subscribed his name to this prospectus, and who was present at a meeting of the subscribers when it was proposed to take certain premises for the purpose of carrying on the distillery, which were afterwards taken, and solicited others to become shareholders, but never paid his subscription, was not chargeable as a partner for goods supplied to the company. *Bourne v. Freeth*, 9 B. & C. 632. See also *Dickinson v. Valfry*, 10 B. & C. 128. Where a project had been formed for the establishment of a company for the manufacture of sugar from beet-root, a prospectus was issued stating the proposed capital to consist of 10,000 shares of 25*l.* each. The directors began their works and entered into contracts respecting them, and manufactured and sold some sugar, but only a small proportion of the proposed capital was raised, and only 1400 out of the 10,000 shares were taken; and it was held that a subscriber who had taken shares and paid a deposit on them, was not liable upon such contracts of the directors without proof that he knew and assented to their proceeding on the smaller capital, or ex-

pressly authorized the making of the contract. *Pitchford v. Davis*, 5 Mee. & Wels. 2. This last decision is of much practical importance, as many companies commence business with less than the proposed capital. We shall therefore give the judgments of the Court of Exchequer respecting it. Lord Abinger, C. B.—The question is, whether the directors were the agents of the defendant in carrying on the business with so small a capital. I thought at the trial, and am still of the same opinion, that where a prospectus is issued, and shares collected, for a speculation to be carried on by means of a certain capital to be raised in a certain number of shares, a subscriber is not liable in the first instance, unless the terms of the prospectus in that respect are fulfilled. But if it be shewn that he knows that the directors are carrying on the undertaking with a less capital, and has acquiesced in their so doing, he may become answerable for their future contracts. In this case, there was very little, if any, evidence to shew that, and I am satisfied with the finding of the jury. Parke, B.—I think the case was properly left to the jury. The defendant, by taking shares in this speculation, gives authority to the directors to bind him by their contracts, in the event of the proposed number of shares being disposed of, and the proposed capital obtained. The secretary who gives the order to the tradesman is the party primarily liable; the directors also, who give the order to the secretary, may be liable. A third party may become liable, if it can be shewn that he has authorized the act of the directors in making the contract. But, by proving the defendant to be an original subscriber, unless the proposed capital is raised, no such authority is shewn. Then, is there in this case sufficient evidence of authority to contract, with knowledge that the directors were acting without the proposed capital having been obtained? The jury have found that there was not, and I think that the finding of the jury is right. Alderson, B.—The authority given by the subscribers to the directors is a conditional one, depending on the terms of the prospectus being fulfilled. In this case that condition had not been fulfilled, and therefore the defendant is not bound by the contract of the directors; and the jury have found that he had not ratified the act of the directors, with a knowledge of that condition not having been performed.

## NOTICES OF NEW BOOKS.

*The Legal Almanac, Remembrancer, and Diary for 1840: containing a Law Calendar, adapted peculiarly for the use of the Profession; including the Times of Legal Proceedings, Terms, Returns, Sitings, and Sessions; Elections and Proceedings under the Reform, Jury, Corporation, Vestry, Highway and other Acts, &c. Lists of the Judges and Officers of all the Courts: Holidays at the Law Offices and Times of Attendance (as lately altered); Magistrates and Commissioners; Precedence of the Bar, and Barristers called in 1838—9, with dates of Call; Law Societies; Articled Clerks examined; Town Clerks, Clerks of the Peace, Clerks of Magistrates and Perpetual Commissioners: Colonial Judges and Law Officers; Stamps, &c.; with a Diary for 1840.* Published for the Proprietors of The Legal Observer, by Edmund Spettigue, 67, Chancery Lane.

THE Legal Almanac, Remembrancer and Diary for 1840, has just been published. Some Lists and additional information, which were suggested by subscribers, have been added since last year. Every possible pains have been taken to carry the information contained in the work down to the time of publication, and we trust that it will be found entitled to an increased measure of professional support. We are aware that its Contents might have been still further extended, and that a volume of some magnitude might be produced as a book of useful reference on various matters occurring in practice, but we have not deemed it expedient to increase the expense of the work by introducing subjects which are to be found in other professional publications, or in the ordinary pocket books; besides, much of the information here alluded to, is already before our readers in the pages of the Legal Observer.

The Almanac and Remembrancer comprises: *The Calendar.*—*The Superior Courts:* Chancery; Queen's Bench; Common Pleas; Exchequer; Judicial Committee of the Privy Council; Admiralty; Ecclesiastical; Bankruptcy; Central Criminal; Insolvent Debtors.—*Patent Office; Record Offices; Registries of Deeds; Commissioners for taking Affidavits.*—*Holidays:* Chancery Offices; Common Law Offices.—*Terms and Returns.*—*Law Offices and Times of Attendance:* Chancery Offices; Queen's Bench; Common Pleas; Exchequer; Admiralty and Ecclesiastical; Inferior Courts.

*Quarter Sessions.*—Police Magistrates and Commissioners.—*Officers of the Houses of Parliament:* Lords; Commons.—*The Bar:* Queen's Counsel and Serjeants according to their rank; Barristers called, 1838—1839.—*Incorporated Law Society; Articled Clerks examined; Town Clerks; Clerks of Peace; Clerks of Magistrates; Perpetual Commissioners; Colonial Judges and Law Officers; London Bankers; Table of Stamps, &c. &c.*

The Diary for 1840, contains, on the several days on which they occur, proper references with regard to the proceedings to be taken, lists to be made, or notices given, under different Statutes and Rules of Court, particularly with a view to the Examination and Admission of Attorneys in each term; the holidays kept at the Law Offices, &c., and other subjects on which mistakes or omission were likely to occur for want of correct information.

## THE

## MICHAELMAS TERM EXAMINATION.

THE examination of persons applying to be admitted as attorneys must take place, as our readers are aware, within the last ten days of Term; and as the first of such ten days will be Saturday the 16th November, we presume the examination will not be fixed for an earlier day than Monday the 18th. Notice will, no doubt, be given to the candidates of the time appointed, but the Rule of Court does not entitle them to notice, or to a copy of the Questions which are annexed to the Regulations made by the Judges. Although it is now nearly four years since the Examination Rules were issued, we understand that many mistakes and omissions still occur, and inquiries are made as if the subject were both new and doubtful. It may be useful to state, therefore, that in the third edition of "The Articled Clerks' Manual"<sup>a</sup> will be found, not only the Rules of Court and Regulations, together with the Questions to be answered by the Attorney and the Clerk, but also minute directions concerning the several notices, forms, &c. &c. On all these points information will likewise be found in the Numbers of the Legal Observer published immediately after the promulgation of the several Rules and Regulations.

It may be material to repeat (what we stated some time ago) that where the

<sup>a</sup> The new edition contains all the Questions from the commencement of the Examination to the present time.

articles of clerkship will expire during the Term, but not until after the first seven days of Term, such articles should, nevertheless, be left at the Law Society, with answers to the questions as to due service up to the time of leaving them, and proof of the completion of the service may be given afterwards, so as to obtain admission before the end of the Term. Several motions have been unnecessarily made to the Court for permission to leave the testimonials after the time required by the Rule of Court. The Examiners are authorized by one of the Regulations to deal with cases of this kind.

The Examiners for the ensuing Term will be one of the Masters of the Common Pleas, with Mr. Austen, Mr. Harrison, Mr. Metcalfe, and Mr. Ranken. We have not heard that any change will take place in the mode of examination.

### SELECTIONS FROM CORRESPONDENCE.

#### SUGGESTED IMPROVEMENTS IN THE LAW.

*To the Editor of the Legal Observer.*

Sir,

It has often appeared to me that there is no mode by which the committee of the Law Institution could better advance the character of the profession than by taking an active part in promoting legal reform.

With this view I beg to suggest to their consideration the heads of some measures, which, in my opinion, would be highly beneficial, viz. :

An act for the registration of settlements of real estates and assignments of life and reversionary interests in personal estate.

An act to establish a depository for deeds, in which parties are jointly interested.

An act to exonerate personal representatives from latent outstanding claims, after having distributed the assets which have come to their hands.

An act embodying the clauses and powers usually inserted in deeds and wills whereby estates or funds are settled so as to prevent their repetition on every occasion.

If any of these measures should be thought advisable, there would be time to prepare them before the meeting of Parliament. LANCE.

#### PASSING INTEREST OF MARRIED WOMEN.

Sir,

I have read the letter of "Studiosus" in your valuable publication of the 19th. A point similar to the case put by him in all its leading features came before me a short time ago, with the exception that the sale was made by the widow and children together; that is, the former of her life interest in the rents and the latter of their vested reversionary interests in

the money to arise by sale of the land. I had very considerable difficulty in my own mind on the subject, and the point was referred to a conveyancer of high standing, who was of opinion that the sale was good, but that the conveyance must be acknowledged under the statute for abolition of fines and recoveries, as he considered that the money to arise by sale of land might and could be considered as land itself; a vested reversionary interest in which *may* clearly be barred by a *feme covert* by acknowledgement. My difficulty in the matter was whether the money to arise by sale of land must not be considered as money, a reversionary interest in which *cannot* be affected by husband and wife, or either of them, so as to bind the wife in the event of her surviving. I beg to call the attention of your correspondent to the fact (as I understand his case) that the widow does *not* join with the lady and her husband in the contemplated charge, and whether the money to arise &c. must not now be considered as money. In the event of the lady dying during the life of the tenant, would not her personal representative be entitled to it in exclusion of her heir at law? It appears to me that the joinder of the tenant for life is a most important difference in the cases. In *my* case, counsel thought that as the purchaser would have the prior interest in the rents, together with the legal estate from the trustees of the will, the conveyance by the married women (with the consent of their husbands) and acknowledgment, would operate as a release, or by way of estoppel. z

#### LIST OF LOCAL AND PERSONAL ACTS,

*Declared public and to be judicially noticed.*  
2 & 3 VICT.

[Concluded from page 476.]

34. An act to enable the General Commissioners for Drainage by the river Witham in the county of Lincoln to sue and be sued in the name or names of any one of the said commissioners or of their clerk or clerks for the time being.

35. An act for making and maintaining certain reservoirs in the township of Rishworth in the parish of Halifax in the West Riding of the county of York.

36. An act for more effectually repairing, improving, and maintaining the harbour of Eyemouth in the county of Berwick.

37. An act for granting further powers to the company of proprietors of the Parrett Navigation.

38. An act for better lighting with gas the town of Brighton, and the several places therein mentioned, in the county of Sussex.

39. An act to enable the London and Birmingham Railway Company to raise a further sum of money.

40. An act for amending and enlarging the provisions of the several acts relating to the Great North of England Railway Company, and for other purposes relating thereto.

41. An act for enabling the Liverpool and Manchester Railway Company to extend the line of the said Railway, and for amending and enlarging the powers and provisions of the several acts relating to such railway.

42. An act to amend the acts relating to the South Eastern Railway.

43. An act for more effectually paving the streets of the city of Perth; for the better lighting, watching, and cleansing the said city and suburbs thereof; for maintaining and regulating the police of the same, and for other purposes relating thereto.

44. An act for establishing an effective police in places within or adjoining to the district called the Staffordshire Potteries, and for improving and cleansing the same, and better lighting parts thereof.

45. An act for repairing several roads leading to the towns of Basingstoke, Odiham, and Alton, in the county of Southampton, and for making several deviations in the line of the said roads.

46. An act to amend an act passed in the sixth year of his late Majesty King William the Fourth, for making a turnpike road from Saint Leonard's and Saint Mary Magdalen to the Royal Oak Inn at Whatlington, and through Sedlescomb to Cripp's Corner in the Parish of Ewhurst, in the county of Sussex.

47. An act for more effectually repairing and improving the road from Edenfield Chapel to Little Bolton, and certain branch roads connected therewith, all in the county palatine of Lancaster.

48. An act for building a bridge over the river Leven in the county of Fife, and otherwise improving the road from Boreland Loan to Sconie Bridge.

49. An act for making and repairing several roads leading to and from the town of Southmolton in the county of Devon.

50. An act for more effectually maintaining and repairing the road leading from the West Side of the entry to the New or Jamaica Street Bridge of Glasgow, by or near Parkhouse, to the east end of the bridge at Renfrew.

51. An act to alter, amend, and enlarge the powers and provisions of an act passed in the seventh year of the reign of his Majesty King William the Fourth, intituled "An Act for making and maintaining a railway or railways from the City of Edinburgh to Leith, and to the shore of the Frith of Forth at or near to Newhaven and Trinity, all in the county of Edinburgh; and to alter and vary the lines and levels of the railways thereby authorized to be made; and for other purposes relating to the said undertaking.

52. An act for dissolving the Croydon Merstham, and Godstone Iron Railway Company.

53. An act to alter the line of the North Midland Railway, and to amend the acts relating thereto.

54. An act to amend the several acts relating to the Preston and Wyre Railway and Harbour Company and the Preston and Wyre Dock Company, and to consolidate the said companies.

55. An act for extending and for altering the line of the Manchester and Leeds Railway, and for making branches therefrom; and for amending the acts relating thereto.

56. An act for altering and extending the line of the Bristol and Gloucestershire Railway, and for amending the acts relating thereto.

57. An act for enabling the Slamannan Railway Company to raise a further sum of money.

58. An act to enable the Wishaw and Coltness Railway Company to raise a further sum of money; and to amend the acts relating to the said undertaking.

59. An act to enable the Ballochney Railway Company to raise a further sum of money; and to amend the acts relating to the said undertaking.

60. An act for making wet docks and other works at and near to Jarrow Slake within the port of Newcastle upon Tyne, and in the county of Durham, to be called "The Tyne Docks."

61. An act for enabling the company of proprietors of the Birmingham canal navigations to make a new cut; and for extending and altering some of the provisions of their present act.

62. An act to repeal so much of an act passed in the twelfth year of the reign of his Majesty King George the First, for repairing the walls, gates, and other public works in the city of Norwich, and several bridges in and near the said city, and for amending the roads therein mentioned, as relates to the application of the tolls and duties thereby authorized to be raised; and to provide a new mode of application thereof.

63. An act for paving, lighting, watching, and improving the town of Bradford in the county of Wilts.

54. An act for erecting, establishing, and maintaining a new market in the city of Aberdeen, and for providing suitable approaches thereto.

65. An act for further improving and maintaining the harbour of the Burgh or Regality of Fraserburgh in the county of Aberdeen.

66. An act for forming a canal and other works within and near certain lands called the West Croft in the parish of Saint Mary in the town and county of the town of Nottingham.

67. An act for building a new gaol for the liberty or soke of Peterborough and hundred of Nassaburgh in the county of Northampton, and for other purposes connected therewith.

68. An act for amending and enlarging the powers of acts for establishing a floating bridge over the river Itchen near the town of Southampton.

69. An act to enable the Manchester and Birmingham Railway Company to vary and extend the line of their railway; and to amend the act relating thereto.

70. An act to enable the Monkland and Kirkintilloch Railway Company to raise a further sum of money; and to amend the acts relating to the said undertaking.



71. An act for incorporating certain persons for the making and maintaining a railway from the township of Crook and Billy Row to the Byers Green Branch of the Clarence Railway in the parish of St. Andrew Auckland, all in the county of Durham, to be called "The West Durham Railway."

72. An act for enlarging the town quay of the borough of Portsmouth, and for improving that portion of the harbour of Portsmouth called the Camber.

73. An act for the improvement of the navigation of the river Moy in the counties of Mayo and Sligo in Ireland.

74. An act to enable the Newport Dock Company to raise a further sum of money.

75. An act to alter and amend the powers and provisions of an act of the fifth year of the reign of his Majesty King William the Fourth, for making and maintaining a pier and other works at Deptford in the county of Kent.

76. An act to alter and amend the powers and provisions of an act for making a railway from the London and Greenwich Railway to the Deptford Pier, to be called "The Deptford Pier Junction Railway."

77. An act to amend and extend the powers of the Northern and Eastern Railway Act.

78. An act to enable the Northern and Eastern Railway Company to alter the line of their railway by forming a junction with the Eastern Counties Railway; and to provide a station and other works at Shoreditch; and to amend the act relating to the Northern and Eastern Railway.

79. An act to alter and divert the line of the South-eastern Railway from a point thereon in the parish of Chiddingstone in the county of Kent so as to join the London and Brighton Railway at or near Redstone Hill in the parish of Reigate in the county of Surrey.

80. An act for better lighting with gas the village of Over Darwen in the county palatine of Lancaster.

81. An act for maintaining and regulating the market in the parish of Sidmouth in the county of Devon.

82. An act for extending and enlarging an act passed in the seventh year of the reign of his late Majesty King William the Fourth, for making and maintaining a turnpike road from Anniesland Toll Bar in the county of Lanark; and for making and maintaining another branch road, to be called Saint George's Road, in connexion with the said road.

83. An act for forming and establishing "The London Patent White Lead Company;" and to enable the said company to purchase certain letters patent.

84. An act for forming and regulating a company to be called "The General Filtration and Dye Extract Company;" and to enable the said company to purchase certain letters patent.

85. An act for the more easy and speedy recovery of small debts and damages within the honour of Pontefract, parcel of her Majesty's Duchy of Lancaster, in the west riding of the county of York; and for altering the practice

and extending the jurisdiction of the court baron of the said honor.

86. An act for the more easy and speedy recovery of small debts within the town of Aberford and other places in the west riding of the county of York.

87. An act for the more easy and speedy recovery of small debts within the town of Rotherham and other places in the west riding of the county of York.

88. An act for the more easy and speedy recovery of small debts within the town and manor of Glossop and other places in the parish of Glossop in the county of Derby.

89. An act for the more easy and speedy recovery of small debts within the town or borough of Grantham in the county of Lincoln, and other places in the counties of Lincoln and Leicester.

90. An act for the more easy and speedy recovery of small debts within the town of Rochdale and other places in the county palatine of Lancaster.

91. An act for the more easy and speedy recovery of small debts within the town of Warrington, and several other places adjacent thereto, in the counties of Lancaster and Chester.

92. An act for altering, amending, consolidating, and enlarging the provisions of certain acts relating to the regulation of buildings in the borough of Liverpool.

93. An act for forming and regulating a company to be called "The Ship Propeller Company;" and to enable the said company to purchase certain letters patent.

94. An act for regulating the police of the city of London.

95. An act for extending the line of railway between London and Blackwall, called "The Commercial Railway;" and for amending the acts relating thereto.

96. An act for establishing a general cemetery for the interment of the dead in the parish of Brighton in the county of Sussex.

97. An act for the more speedy recovery of small debts within the manor of Hatfield and other places in the west riding of the county of York.

98. An act for the more easy and speedy recovery of small debts within the town of Belper and several other places in the county of Derby.

99. An act for the more easy and speedy recovery of small debts within the borough of Newark and other places in the counties of Nottingham and Lincoln.

100. An act for the more easy recovery of small debts within the parishes of Prestwich-cum-Oldham and Middleton in the county of Lancaster.

101. An act for the more easy and speedy recovery of small debts within the town of Bury and other places therein mentioned in the county of Lancaster.

102. An act for the more easy and speedy recovery of small debts within the parish of Wirksworth and other parishes and places adjacent or near thereto, in the several counties of Derby and Stafford.

103. An act for the more easy and speedy recovery of small debts within the parish of Eckington and other places in the county of Derby.

104. An act for the more easy and speedy recovery of small debts within the borough and parish of Chesterfield, and other parishes and places adjacent or near thereto, in the county of Derby.

105. An act for the more easy and speedy recovery of small debts within the town and county of the town of Nottingham, and other places therein mentioned, in the counties of Nottingham and Derby.

106. An act for the more easy and speedy recovery of small debts within the parishes of Halifax, Bradford, Keighley, Bingley, Guiseley, Colverley, Batley, Birstal, Mirfield, Hartishead-cum-Clifton, Almondbury, Kirkheaton, Kirkburton, and Huddersfield, and the Lordship or liberty of Tong, in the county of York.

107. An act for further extending the approaches to London Bridge, and amending the acts relating thereto.

#### PRIVATE ACTS,

*Printed by the Queen's Printer, and whereof the printed copies may be given in evidence.*

1. An act for inclosing certain open and common downs or sheepwalks within the several tithings of Oxenbourn and Ramsdean in the parish and manor of Eastmeon in the county of Southampton.

2. An act for inclosing lands in the honour or lordship of Chirk and Chirkland in the several parishes of Llangollen and Llainsaintfraid Glyn Ceiriog in the county of Denbigh.

3. An act for inclosing lands in the parish of Stow-cum-Quay in the county of Cambridge.

4. An act for inclosing lands in the parish of Moulton in the county of Suffolk.

5. An act for inclosing lands in the parishes of Fretherne and Saul in the county of Gloucester.

6. An act for inclosing lands in the parish of Melbourn in the county of Cambridge.

7. An act for the sale of the advowson of the vicarage of Tetbury in the county of Gloucester.

8. An act for inclosing lands in the parish of Berkely in the county of Gloucester.

9. An act for inclosing lands in the manor and township of Totley in the parish of Dronfield in the county of Derby.

10. An act for inclosing lands in the manor of Unstone in the parish of Dronfield in the county of Derby.

11. An act for inclosing lands in the parish of Ringstead in the county of Northampton.

12. An act for inclosing lands in the parish of Barton in the county of Cambridge.

13. An act for inclosing lands in the borough or township of Clun in the parish of Clun in the county of Salop.

14. An act for inclosing lands in the parish of Comberton in the county of Cambridge.

15. An act for inclosing lands in the parish of Rampton in the county of Cambridge.

16. An act to enable Jane Mills to grant building and repairing leases of estates in the parish of Aston-juxta-Birmingham in the county of Warwick, devised by the will of the late Wriothesly Digby, Esquire; and also to alter and amend the power of leasing contained in the marriage settlement of Charles Wriothesly Digby, Esquire.

17. An act to enable the trustees of the estates devised by William Hulme, Esquire, to appropriate certain parts of the accumulated fund arising from the said estates towards the endowment of benefices, the building of churches, and for other purposes.

18. An act for vesting certain hereditaments situate in the parish of Drypool within the borough of Kingston-upon-Hull and in the parish of Sutton in the east riding of the county of York respectively, late the property of Robert Raikes, Esquire, deceased, in trustees, upon trust to be sold, and for laying out the money arising therefrom in the purchase of other estates, to be settled to the same uses.

19. An act for giving effect to certain powers as to parts of the settled estates of the most noble Richard Plantagenet Duke of Buckingham and Chandos.

20. An act to enable the mayor and commonalty and citizens of the city of London to let and sell parcels of ground in Saint George's fields near Bethlehem Hospital to the governors of the said Hospital.

21. An act for enabling the keepers and governors of the possessions, revenues, and goods of the free grammar school of John Lyon within the town of Harrow-on-the-Hill in the county of Middlesex to grant improving leases of their estates at Harrow and Barnet, and for other purposes therein mentioned.

22. An act for explaining and amending an act made and passed in the fifty-ninth year of his Majesty King George the third, intituled "An act for vesting the manor of Oram, and certain messuages, lands, tenements, and hereditaments in the county of Sussex, part of the settled estates by the will of Samuel Blunt, Esquire, deceased, in trustees, to be sold; and for vesting the money arising from such sale in the purchase of other estates, to be settled to the same uses.

23. An act for vesting certain parts of the devised estates of Hannah Gilpin Sharp, widow, deceased, in trustees, in trust to be sold or demised, for the purposes therein mentioned.

24. An act for vesting certain parts of the entailed estate of Ladykirk in trustees, to be sold, for payment of the debts affecting the same, and for other purposes therewith connected.

25. An act for authorising the granting of leases of part of the estates in the county of Kent devised by the will of the right honourable Edward Earl of Darnley deceased.

26. An act to authorise the granting of mining and building leases and conveyances of parts of the estates devised by the will of James Alexander Hodson Esquire, deceased, subject to the trusts of such will.

27. An act to enable the mayor and com-

monalty and citizens of the city of London to sell building ground in Saint George's Fields.

28. An act for inclosing certain lands called the West Croft and Burton Leys, in the parish of Saint Mary in the town and county of the town of Nottingham.

29. An act for inclosing lands in the parishes of West Beckham and Alby in the county of Norfolk.

30. An act for inclosing lands in the manor of Almsworthy in the parish of Exford in the county of Somerset.

31. An act for inclosing lands in the township of Hartishead, otherwise Hartshead, in the parish of Dewsbury in the West Riding of the county of York.

32. An act for inclosing, allotting, and improving certain open fields in the parish of Saint Mary in the town and county of the town of Nottingham.

33. An act for altering and amending certain acts relating to the churches of Saint Mark, Saint Luke, and Saint Michael in the borough of Liverpool.

34. An act for vesting the estate called the Combe Bank Estate, late belonging to the Right Honourable Arthur Lord Templemore, deceased, in trustees to sell the same, and to invest the produce of such sale for the benefit of his infant sons.

35. An act to authorise the sale of certain lands tenements, and hereditaments in the counties of Kent and Northampton, formerly belonging to William Marshall of Clifford's Inn in the city of London, Gentleman, deceased; and for other purposes incidental thereto.

36. An act to enable Randolph earl of Galway, or the heir in possession of the entailed estates of Garlies, Baldoon, Newton Stewart, and others, in the county of Wigton and stewardry of Kirkcudbright, to reclaim certain sleschy ground on the shores of the said estates, and to drain and improve the moss of Cree, part thereof; and to burden the said estates partially, and the reclaimed and improved land, with the expence; and also to burden the said estates with certain expences incurred by the said Earl in improving the same.

37. An act for vesting parts of the estates of Sir John Davie, Baronet, deceased, in trustees, upon trust to be sold; and for laying out the purchase money, under the direction of the Court of Chancery, in the purchase of other estates, to be settled to the same uses.

38. An act for effecting an exchange of mines and lands between Sir Benjamin Hall, Baronet, and others, and Capel Hanbury Leigh Esquire, and others.

39. An act to authorize conveyances in fee farm, or demises for long terms of years under reserved rents, of certain parts of the settled estates of the Right Honourable George Harry Earl of Stamford and Warrington.

40. An act to enable the mayor, aldermen, and burgesses of the borough of Reading in the county of Berks to sell certain real estates discharged from certain liabilities, and to invest the purchase monies arising from such sales in the purchase of other real estate, to be charged with such liabilities.

41. An act for exchanging freehold and copyhold estates belonging to John Motteux, Esquire, in West Rudham and East Rudham in the county of Norfolk, for freehold, copyhold, and leasehold estates in Darsingham in the same county, settled under the will of Horatio Earl of Orford, deceased.

42. An act for authorising the sale of the real estate devised by the will of Henry Boulton, Esquire, deceased, and for the application of the monies to arise thereby.

43. An act for vesting the undivided sixth share of Ann Campbell Bligh, Spinster, a lunatic, as one of the six daughters and co-heiresses of William Bligh, Esquire, deceased, in certain lands and hereditaments in New South Wales of which the said William Bligh died seised, in trustees, in whom the other five undivided sixth shares are now vested, upon trust for sale.

44. An act for enabling the trustees of the will of the Reverend John Templer, Clerk, deceased, to exchange certain of the real estates thereby devised, situate in the county of Devon, for certain other estates situate in the same county.

45. An act to enable William Russell, Esquire, to grant leases of coal mines under the lands within the manor or lordship of Branspeth and other lands in the county of Durham, devised by or subject to the uses and trusts of the will and codicil of William Russell, Esquire, deceased, and the will and codicil of Matthew Russell Esquire, deceased.

46. An act for inclosing lands within the parishes of Rathkeale and Croagh in the county of Limerick.

#### PRIVATE ACTS, *Not Printed.*

47. An act for naturalizing John Christopher Kayser.

48. An act to enable William Beckett, Esquire, and his issue male to take the name and bear the arms of Turner, pursuant to the will of Martha Turner, widow, deceased.

49. An act for naturalizing Ernest Reuss.

50. An act for naturalizing Don Manuel de la Torre Antuano.

51. An act for naturalizing George Edward Biber.

52. An act to dissolve the marriage of Johnstone Napier, Esquire, a lieutenant colonel in the military service of the East India Company on their Madras establishment, with Isabella his now wife, and to enable him to marry again; and for other purposes therein mentioned.

53. An act to dissolve the marriage of Dionysius Lardner, Clerk, Doctor of Civil Law, with Cecilia Lardner his now wife, and to enable him to marry again; and for other purposes therein mentioned.

54. An act to dissolve the marriage of Henry Coude (otherwise Cood) Esquire with Jane his now wife, and to enable him to marry again; and for other purposes.

55. An act to dissolve the marriage of William Carleton, Esquire, with Rosemond Carleton his now wife, and to enable him to

marry again; and for other purposes therein mentioned.

56. An act for naturalizing Nicola Ivanoff.

57. An act to dissolve the marriage of Robert Allison with Mary Ann his now wife, and to enable him to marry again; and for other purposes therein mentioned.

58. An act to dissolve the marriage of Edward Leigh Pemberton with Charlotte his now wife, and to enable him to marry again; and for other purposes therein mentioned.

59. An act to dissolve the marriage of Richard John Sutcliffe Mellin, Esquire, with Jane Mellin his now wife, and to enable him to marry again; and for other purposes therein mentioned.

60. An act to dissolve the marriage of the Reverend William Andrew Weguelin, Clerk, with Emma his now wife, and to enable him to marry again; and for other purposes therein mentioned.

61. An act for naturalizing Alexander Henry Augustus John Count de Saint George.

62. An act for naturalizing Samuel Aspinwall Goddard.

## SUPERIOR COURTS.

### Vice Chancellor's Court.

#### FRAUD.—EVIDENCE.—VERBAL AGREEMENT.

*A bill prayed relief against a written instrument, alleging that it was obtained by fraud, or that a verbal agreement, alleged to have been the consideration, might be enforced: Held, under the circumstances, that the allegations of fraud were not proved; and the bill, so far as it asked to give effect to the verbal agreement, was dismissed with costs.*

Mr. John Farquhar, who acquired a large fortune in India, and improved it after his return to England by successful commerce, as one of the partners in the mercantile firm of Bazetts, Farquhar, Colvin & Co., and became in 1824 the purchaser of Fonthill Abbey and the estates belonging to it from Mr. Beckford, died intestate, and without issue in July 1826, leaving seven nephews and nieces, his only next of kin surviving, and real and personal estates worth altogether between 700,000*l.* and 800,000*l.* Soon after his death a contest arose between the next of kin about obtaining administration of his estate, and it was at last agreed between them that John Farquhar Fraser, a barrister, and James and George Mortimer, merchants, three of the nephews and next of kin of the intestate, should take out the letters of administration, which, however, were granted to Mr. Fraser alone, the Mortimers not being able to find sufficient sureties. Mr. George Mortimer had been the intestate's favourite nephew, and received from him in his lifetime large sums of money, and merchandize and other property, by orders on the intestate's bankers and partners, and in the contest about obtaining the letters of administration he insisted that all he received were

given to him as free and absolute gifts, except part of the Fonthill estates, which he had purchased of the intestate, and for which he owed part of the purchase money. But on being informed by Mr. Fraser that he could not be admitted to join in the administration until he made an arrangement in respect of the money and property which he had from the intestate, he then agreed to sign an instrument in writing, by which he acknowledged that one sum of 20,000*l.* given to him by the intestate was a loan. Upon his signing that instrument, Mr. Fraser agreed that time should be given for the payment, and that no demand should be made in respect of other sums which had been alleged by Mr. Fraser to have been received by Mr. G. Mortimer from the intestate as loans. A bill was filed by Mrs. Trezevant, one of the next of kin, and her husband in her right, in 1829, against Mr. Fraser, the administrator, and the other next of kin, for administration of the intestate's estate; and under the decree for account in that suit, a state of facts was brought in before the Master charging Mr. G. Mortimer with being debtor to the estate in several large sums, besides the 20,000*l.* He put in his answer to the charge, insisting that all he had of the intestate were gifts, and that the acknowledgment to the contrary in respect of 20,000*l.* was obtained from him by means of false representations and coercion. The Master reported him a debtor to the estate for the 20,000*l.*, but not as to the several other sums charged against him. Mr. and Mrs. Trezevant and Mr. Fraser excepted to the report, and the exceptions were allowed, and the decree of Court allowing them was, on appeal, affirmed in the House of Lords.<sup>a</sup> Mr. G. Mortimer died during the proceedings. His widow and executrix filed the present bill for relief against Mr. Fraser and the other next of kin, praying that the said acknowledgment of a debt of 20,000*l.* may be set aside, or that if the Court should still hold her bound by it, that the defendants may be held bound by the same instrument to refrain from all other demands on her husband's estate. Mr. and Mrs. Trezevant said they were not parties to any arrangement between G. Mortimer and J. F. Fraser, and were not bound by it from getting in every part of the intestate's estate. The other circumstances of this suit, and the line of argument used on both sides, appear in the following judgment.

*The Vice Chancellor.*—The question was, whether the bill filed by Mrs. Mortimer was supported by the evidence produced by her. It appeared that Mr. Farquhar who died intestate, had in his lifetime, made an advance to his nephew, George Mortimer, of 20,000*l.*, which the latter always insisted to have been a gift. There were other transactions between them, in which George Mortimer insisted that all that he had received from Mr. Farquhar were gifts. Mrs. Mortimer, the plaintiff, the widow and personal representative of G. Mortimer, in her bill represented that when a

<sup>a</sup> 4 Clark & Fin. 680.

discussion took place among the next of kin of Mr. Farquhar, including J. Farquhar Fraser, G. Mortimer, and five other persons, who should take out administration to the estate, a representation was made to G. Mortimer that he could not be permitted to join in the administration, unless he would admit that the 20,000*l.* was due from him to the estate. The bill alleged that G. Mortimer, believing it to be true that he would be excluded from the administration unless he admitted the 20,000*l.* to be a loan, and that if he would so state, no further demand would be made on him in respect of any other property he had received from his uncle, and being at the time in a very bad state of health, and desirous that his wife and family should not, after his death, be exposed to litigation, consented to repay the 20,000*l.* by instalments; that J. F. Fraser was extremely urgent to have the business completed, and after G. Mortimer had been induced to yield to his importunities, which occurred on the 4th of December, 1826, J. F. Fraser prevailed on him to accompany him and William Aitkin, James Lumsden, and James Mortimer, (three others of the next of kin, the two former in right of their wives) to the office of Mr. Gale, a solicitor in Basinghall Street, opposite to G. Mortimer's house, and Fraser stated to Gale the nature of the agreement they were about to enter into, which was that on payment of 20,000*l.*, (and of a sum of 18,000*l.*, about which there was no dispute) all accounts between G. Mortimer and the intestate were to be considered as closed, and that Gale drew up the agreement containing a clause to that effect, and that Fraser then objected to sign the agreement if it contained such a clause, and that the objection was made on the express and only ground that such a clause would be fraudulent, as G. Mortimer was about to become one of the administrators, and that, but for that reason he would not have objected to the insertion of the clause. The bill then alleged that upon Fraser's objection the clause was struck out of the agreement upon the express understanding nevertheless that if the clause were admitted, and if G. Mortimer agreed to pay 20,000*l.*, he was not to be called upon to account for any other property he had received from the intestate. The bill next stated that what took place on that occasion was stated accurately in the affidavit of Mr. Lumsden and Mr. Aitken, in support of a petition which Mrs. Mortimer had presented for leave to file a bill to do what was sought by the present bill. The question was whether these representations were true. It was first observable that not only in the petition first mentioned was the transaction stated differently, but that Mrs. Mortimer's own affidavit in support of her petition varied from the statement of her bill. In her petition, after stating what took place at the making of the agreement, she added that the paper was read over to G. Mortimer, who objected that it did not contain any undertaking that no claim should be made on him in respect of any other property which he had received from the intestate,

and that Fraser in the presence of James Mortimer, Lumsden, and Aitken, replied it was entirely unnecessary, as it was fully agreed that if G. Mortimer would sign the paper no further claim should be made upon him, and that administration would be thereupon granted to himself, James and G. Mortimer; and the petition then alleged that in consequence of such arrangement and assurance, G. Mortimer was induced to sign the paper without professional assistance. It was obvious that this statement in the petition was totally different from the statement in the bill. But about the fact there could be no doubt when the Court looked at Mr. Gale's depositions. So far from the transactions having taken place on the 4th of December, it appeared from Mr. Gale's statement that he had been G. Mortimer's solicitor; and that on the 2d of December, in pursuance of instructions he had received, he prepared a paper containing a clause, that on payment by G. Mortimer of 20,000*l.* (and 18,000*l.* not in dispute), all accounts between G. Mortimer and the intestate should be closed; and Fraser objected to sign the paper in that form, and G. Mortimer refused to sign it while it contained a particular clause; and such being the case, in the interval between the 2d and 4th of December, he (Gale) caused two copies to be made of the agreement, with the omission of the clauses objected to. There could be no doubt that the document was read over to all parties concerned, and fair copies in duplicate signed. In the original bill filed by Mr. Trezevant (whose wife was a niece of the intestate, and who was not a party to any arrangement) a formal decree for an account was made in March, 1830. The Master made his report in February, 1835, in which he charged G. Mortimer's estate with the 20,000*l.* In consequence of the Master not proceeding to charge that estate further, exceptions were taken by Mr. Trezevant, insisting that G. Mortimer ought to have been charged with a variety of other sums; and exceptions to the same effect were taken by Fraser. G. Mortimer died in 1832, between the dates of the decree and the report. It was a remarkable thing, if ever there was such an agreement as that now set up by Mrs. Mortimer, that when the matter was in progress in the Master's office, and an attempt was made to charge G. Mortimer or his estate, neither he nor his wife, who afterwards represented him and his estate, never thought of filing a bill to give effect to the statement which was made the foundation of the present bill. On the contrary, the course pursued was an attempt to shew that the things which were the subject of the exceptions were gifts, and not loans from the intestate. The result was that all the evidence in support of that attempt failed, on the ground that the documents produced to prove gifts were forgeries, or otherwise invalid. The evidence of Mr. Lumsden and Mr. Fraser in support of the bill was completely overturned by the testimony of Mr. Gale, corroborated by the documents

which had been produced. There was a great deal of loose evidence relating to the other property, which G. Mortimer had from the intestate, but the question here being whether the matter took place in the way Mr. Mortimer had stated it, upon a careful consideration of the whole of the statements, his Honor was of opinion that there was no foundation for the fact on which her whole case rested, and so far as the bill asked relief in respect of the verbal agreement as part of the written agreement, it should be dismissed with costs.

*Mortimer v. Fraser and others*, Sittings at Lincoln's Inn, July 16th and 27th, 1839.

#### PLEADING.—MISJOINDER OF PARTIES.

*An action having been brought against an insurance company by the agent of the principal insurer, who was not a party to the action, the company filed a bill of discovery in aid of their defence, and made the insurer a defendant thereto; he demurred: Held, that such a bill would not lie against a person who was not a party to the action.*

This was a demurrer to a bill of discovery, filed by the Alliance Insurance Company, against a person who had insured a ship and cargo with them, and his agent, in aid of a defence to an action at law brought against the company by the agent alone. The question was whether the principal insurer, not being a party to the action, was properly made a party to the bill. The state of facts and the line of argument may be collected from the following judgment:

*The Vice Chancellor.*—The bill was filed by Mr. Irving, the chairman of the Alliance Marine Assurance Company, in whose name all actions on behalf of the company were directed by their act to be brought, stating that William Thompson, one of the defendants, caused a policy of insurance to be effected on the 4th of August 1837, on the freight of a foreign vessel, called *Gustave*, and that Thompson and R. G. Kruger claimed to be solely interested in all benefit to be derived from the policy; that the ship was lost, and the plaintiff and the company had recently, and long since the policy was effected, discovered that the ship was not seaworthy at the time she left *Dantzic*, and that none of the goods or merchandise mentioned in the policy were ever on board the ship, or if shipped, that they were unshipped again before the vessel sailed. The bill then stated that Thompson commenced an action against the plaintiff in the Court of Exchequer to recover from the company the sum of 680*l.* upon the policy, and had in his declaration averred that the interest in the ship and in the goods comprised in the policy was in himself or Kruger, and that the ship was lost by the perils of the sea. The bill then stated that an application was made to Thompson not to carry on the action, but he refused to comply with the request, and then, after stating circumstances to shew the whole was a fraud on the Alliance Company, it prayed a discovery and an injunction against Thompson

and Kruger. To this bill a general demurrer had been put in by Kruger, and it was argued that the demurrer ought to be overruled on the authority of *Glyn v. Soares*<sup>a</sup> in the Court of Exchequer in Equity before Lord Abinger. The circumstances of that case were complicated, and his Honor would be unwilling to be thought, for the purpose of deciding the present case, to give any opinion on the judgment there delivered by the Lord Chief Baron; but he could not help observing on some parts of it, which appeared to him to proceed on misapprehension of the circumstances of the cases to which it referred. Lord Abinger, referring to the case of *Fenton and Hughes*,<sup>b</sup> after stating the circumstances, proceeded thus to describe Lord Eldon's judgment. "He" Lord Eldon "says that he has looked with great anxiety into the bill, to see if he could discover any sort of interest that Bate had, to make him any thing but a witness, and he goes through the topics to shew that Bate was clearly a witness at law for the party who had filed that bill; that if he could not be a witness on the other side, by reason of any interest yet undiscovered, that was for the advantage of the plaintiff in equity, and he comes to the conclusion that there is not such a charge of interest in Bate as justified him in retaining the bill against him." Lord Abinger went on to say that "if the bill had stated that the plaintiff in the action and Bate had agreed to divide the profits, or if it had stated that Bate had some such interest in the suit as identified him in interest with the plaintiff in the action, though not himself a plaintiff on the record, I should have thought it probable from Lord Eldon's judgment that he would not have allowed the demurrer." His Honor had, however, procured the papers in *Fenton v. Hughes*, and was unable to find that Bate had any interest, though it was charged by the bill that he was interested in the event of the action, and was entitled to the money. So that in fact there were three things in that case which induced Lord Abinger to think that if they had been in the bill Lord Eldon would have come to a different conclusion, whereas Lord Eldon seeing those things stated in the bill, came to the conclusion he was reported to have come to. Again, in the *Bishop of London v. Fytche*,<sup>c</sup> which was a bill filed by the Bishop against the patron of a living, the Bishop having understood that the clerk had given a bond to resign on demand, refused to admit him, conceiving the bond simoniacal, and upon a *quare impedit* being commenced at law, the bishop filed a bill for discovery in aid of his defence to the action. Lord Abinger in his judgment<sup>d</sup> assumed the bill was filed against both Fytche and Eyre the clerk, as he said; "From this it seems clear that the clerk was no more a party to the record from his name being inserted in the declaration than any individual is a party whose name is found in an allegation of special damage by reason of the loss of his custom and

<sup>a</sup> You. & Coll. 653.

<sup>b</sup> 7 Ves. 287.

<sup>c</sup> 1 Bro. C. C. 96.

<sup>d</sup> 1 Y. & C. 686-7.

trade. Therefore the case of the *Bishop of London v. Fytche* is a direct decision that where a party is interested in the subject-matter of the suit, a bill of discovery may be sustained against him though not a party to the record at law, as well as against an individual who is a party on that record." But the fact was that the bill was filed against Fytche alone; and Lord Thurlow overruled his demurrer. His Honour said he saw nothing in the present case which went to shew that Kruger was a party who might derive any benefit from the action; he was not a party to that record; and his Honour could not but think, notwithstanding the decision of the Lord Chief Baron in *Glyn v. Soures*, that the present was a perfectly plain case and bound by the authority in *Fenton v. Hughes*, and therefore he should allow the demurrer. The case of *Fen v. Guppy* had been carried from this Court to Lord Chancellor Lyndhurst, not properly as an appeal, because the motion in this Court was made in one case only, in which the *cestuis que trust* were not parties, and the motion before the Lord Chancellor was made in both causes, and there the *cestuis que trusts* were parties. In that case, though the principle was correctly stated by Lord Lyndhurst, his observations were extra judicial. On the whole it appeared to his Honour that the present case was bound by the decisions which he had before mentioned. He could not help thinking there had been some mistake, for if this had been the practice for fifteen years in the Exchequer, as was alleged, it was strange no instance of such a bill had been produced.

Demurrer allowed. *Irving v. Thompson and Kruger*. Sittings at Lincoln's Inn, July 22nd and 31st, 1839.

### Exchequer of Pleas.

#### AMENDMENT OF RECORD.—CONTRACT.

*The plaintiff declared that the defendant contracted to build for him a certain booth or building, according to plans agreed upon, for 20*l.*, the same to be erected by the 28th of June, and at the trial it was proved that the contract was to erect certain seats or tables for 25*l.*, to be completed four or five days before the coronation: The defendant had pleaded non assumpsit, and that the contract was rescinded; Held that the judge at Nisi Prius might amend the record according to the contract proved.*

Platt moved to set aside the verdict found for the plaintiff in this action. It was assumpsit, and the declaration, in its original form stated that in consideration that the plaintiff would employ the defendant to erect a certain booth or building, and to fit up and complete the same, according to certain plans then agreed upon, for 20*l.*, the defendant agreed to erect the same by the 28th June; and that the plaintiff, confiding &c. employed the defendant, but (breach) that the defendant did not erect the same, whereby the defendant was damaged. The defendant pleaded non assumpsit, and that the contract was rescinded. The

cause was tried before Lord Abinger, C. B., and then it appeared that the contract was to erect certain seats and tables on certain ground, which the plaintiff had hired for 25*l.*, and that they were to be completed four or five days before the coronation. It was then contended on behalf of the defendant, that the declaration was not supported by the evidence, which shewed a different contract from that alleged; and the plaintiff's counsel applied to the learned judge to amend the record. An amendment was in consequence made, and the jury found for the plaintiff with 5*l.* damages. The present motion was made on the ground that the amendment ought not to have been permitted, for that the contract proved was entirely different from that set up, and was one which the defendant could not have come prepared to meet. Such alterations would not be encouraged by the Court, for they would tend to induce great lexis in pleading.

Lord Abinger, C. B.—A contract was clearly proved. That was the most material fact, and its terms were of minor importance. I was certainly somewhat reluctant to make the amendment, but, on looking at the pleas, I thought that the defendant could not be prejudiced.

Parke, B.—I think that this is precisely the case which the act of parliament intended to meet. There is an amendment made in a matter not material to the merits of the case, and by which the defendant cannot have been prejudiced in his defence.

Alderson, B.—If we were to grant this rule, a party might be turned round upon a mere variance of words. The second plea clearly shews that the amendment did not affect the merits.

Maule, B.—In this case the contract has not been reduced to writing, and it is uncertain what precise terms may be proved. Where only one count is allowed, it would be very inconvenient to construe it with the strictness contended for; and I think it should to a certain extent be adapted to the proof.

Rule refused.—*Ward v. Pearson*, T.T. 1839. Exchq.

#### 52 GEO. 3, c. 165, s. 54.—OPERATION OF STATUTE OF LIMITATIONS.

*The operation of the Statute of Limitations is not prevented by the 52 Geo. 3, c. 165, s. 54, which gives creditors a remedy against the future estate of insolvents discharged under its provisions.*

This was an action of assumpsit, brought against the executors of William Reid, (an insolvent) deceased, for work and labour done, goods sold, and on an account stated, to which the defendants pleaded the Statute of Limitations. The plaintiff replied that William Reid was a prisoner in the Marshalsea in the year 1812, after the making of the said promises, at the suit of the plaintiff and other creditors; and that subsequently he applied under the 52 Geo. 3, c. 165, to be discharged and exonerated from his debts, and that he was declared to be

entitled to be discharged; that subsequently, within six years next before the commencement of this suit, certain goods and chattels came into the hands of the defendants as executors of the said William Reid, to be by them administered, which were the first part of his future estate, which ever came to the hands of the said defendants, and therefore, the plaintiffs prayed judgment and the damages by them sustained, &c. Special demurrer, assigning for cause that, although the replication confessed the matters alleged in the plea, yet, it did not in any way avoid the same, and also that it was not alleged in the said replication that the said William Reid, in his lifetime, and after he was adjudged to be entitled to his discharge, had not any future estate or effects, out of which the plaintiff would be entitled to recover or have execution; and also that the said act mentioned did not save the causes of action from the effect of the Statute of Limitations; and that the replication prayed an improper judgment, and was otherwise insufficient.

*Martin*, in support of the demurrer, contended, that the replication was bad in substance. The act 52 Geo. 3, c. 165, did not prevent the operation of the Statute of Limitations. The 54th clause reserved to the creditor the right of payment out of the future assets; but it contained nothing which prevented the debt from being barred by lapse of time. This was evident from the terms of the more recent act of the 7 Geo. 4, c. 57, s. 57, which required that before adjudication, every prisoner should execute a warrant of attorney, authorising the entering up of a judgment in one of the superior Courts in the name of the assignee for the amount of the debts in the schedule, and thus provided that in case it should appear to the satisfaction of the Court that the prisoner was able to pay such debts, or that he was dead, leaving assets for that purpose, the said Court might permit execution to be taken out upon judgment, for such sum of money as under the circumstances of the case, the Court should order, and such further proceedings should be had upon such judgment as might seem fit to the discretion of the Court until the whole of the debts should have been paid, together with such costs as the Court should award. The case of *Barton v. Tattersall*, 1 R. & M. 237 was not in favor of the plaintiff, for it was decided upon the principle which prevailed in a Court of Equity, that when there was a trust fund the statute of limitations would not take effect. The replication was also bad on the other grounds stated in the causes assigned for the demurrer.

*J. Jervis*, in support of the replication.—The Statute of Limitations did not run in this case. The act of 53 G. 3, only protected the person of the debtor, and not his future property, and the plaintiffs would have a reasonable time in which to bring their action, after they learned that property had come into the hands of the executors.

*Per Curiam*.—The replication is clearly bad. Even supposing that, under the circumstances, a new promise arose, it would be a promise by

the executors, whereas the plaintiff has declared on a promise by the testator.

Judgment for defendants.—*Browning and others v. Paris and another, executors of William Reid, deceased*, T. T. 1839. Excheq.

#### ACTION BY HUSBAND AND WIFE.

*A lease for years being made to the plaintiff and his wife, the former brought an action for injury done to his reversionary interest in respect of land which he had underlet: Held, that the action was properly brought by the plaintiff alone.*

*Alexander* moved for a rule calling upon the plaintiff to shew cause why the verdict found for him at the trial of the action should not be set aside, and a nonsuit entered. It was an action brought against a railway company for injury done to the plaintiff's reversionary interest in certain land in the occupation of his tenant, and the defendant pleaded that the land did not belong to the plaintiff *modo et forma*. At the trial, it was proved that the land had been demised by the Dean and Chapter of Durham to the plaintiff and his wife, and it was thereupon objected that the action was improperly brought by the plaintiff alone. The objection, however, was overruled, and a verdict was returned for the plaintiff. It was now urged that the action should have been brought in the names of the plaintiff and his wife. In 1 Roper, 173, it was said—"To chattels real, of which the wife is or may be possessed during marriage, the law gives to the husband a qualified right only; i. e. an interest in his wife's right with a power of alienation, during the coverture. If, therefore, he dispose of his wife's term of years by a complete act in his lifetime, his right by survivorship shall be defeated." In Co. Litt. 46 b, it was laid down, "If a man be possessed of a term of 40 years in right of his wife, and makes a lease for 20 years, reserving rent, and dies, the wife shall have the residue of the term, but the executors of the husband shall have the rent, for it was not incident to the reversion, for that the wife was not a party to the lease."

*Cur. adv. vult.*

Lord Abinger, C. B., subsequently said that the Court had come to the conclusion that there was no ground for the objection. They were also of opinion that if the objection had been valid, it should have been taken by a plea in abatement.

Rule refused.—*Wallis v. Harrison*, T. T. 1839. Excheq.

#### CHANCERY SITTINGS,

*Michaelmas Term, 1839.*

Before the Lord Chancellor,

AT WESTMINSTER.

Saturday .. Nov. 2	{ Appeal Motions and Adjourned Petitions.
Monday .. 4	
Tuesday .. 5	{ Appeals.
Wednesday .. 6	



Thursday ..	7	Appeal Motions & Ditto.
Friday ..	8	} Appeals and Causes.
Saturday ..	9	
Monday ..	11	
Tuesday ..	12	
Wednesday ..	13	
Thursday ..	14	Appeal Motions & Ditto.
Friday ..	15	} Appeals and Causes.
Saturday ..	16	
Monday ..	18	
Tuesday ..	19	
Wednesday ..	20	
Thursday ..	21	Appeal Motions & Ditto.
Friday ..	22	} Appeals and Causes.
Saturday ..	23	
Monday ..	25	Appeal Motions & Ditto.

## Before the Vice Chancellor,

AT WESTMINSTER.

Saturday .. Nov.	2	Motions.
Monday ..	4	Petition-day.
Tuesday ..	5	} Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday ..	6	
Thursday ..	7	Motions.
Friday ..	8	} Short Causes, Unopposed Petitions, and General Cause Paper.
Saturday ..	9	
Monday ..	11	} Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday ..	12	
Wednesday ..	13	
Thursday ..	14	Motions.
Friday ..	15	} Short Causes, Unopposed Petitions, and General Cause Paper.
Saturday ..	16	
Monday ..	18	} Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday ..	19	
Wednesday ..	20	
Thursday ..	21	Motions.
Friday ..	22	} Short Causes, Unopposed Petitions, and General Cause Paper.
Saturday ..	23	
Monday ..	25	Motions.

## Before the Master of the Rolls.

AT WESTMINSTER.

Saturday .. Nov.	2	Motions.
Monday ..	4	Petitions in Gen <sup>l</sup> Paper.
Tuesday ..	5	} Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Wednesday ..	6	
Thursday ..	7	Motions.
Friday ..	8	} Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday ..	9	
Monday ..	11	
Tuesday ..	12	
Wednesday ..	13	
Thursday ..	14	Motions.
Friday ..	15	} Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday ..	16	
Monday ..	18	
Tuesday ..	19	
Wednesday ..	20	
Thursday ..	21	Motions.

Friday ..	22	} Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday ..	23	
Monday ..	25	Petitions in Gen <sup>l</sup> Paper. Motions.

## AT THE ROLLS.

Tuesday ..	26	} Short Causes after swearing in the Solicitors. Consent Causes, Short Causes, and Consent Petitions, every Tuesday at the Sitting of the Court.

## Exchequer Equity.

The Lord Chief Baron will sit in the Exchequer Chamber 2d November on Petitions and Motions, and the 5th on Further Directions, &c.

COMMON LAW SITTINGS,  
In and after Michaelmas Term, 1839.

## Queen's Bench.

In Term.

MIDDLESEX.

LONDON.

Monday .. Nov.	4	} Saturday .. Nov. 23
Thursday ..	7	
Friday ..	22	

## After Term.

Tuesday .. Nov. 26	Wednesday .. Nov. 27
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The Court will sit at eleven o'clock in Term, in Middlesex; at twelve in London; and in both at half-past nine after Term.

Long Causes will probably be postponed from the 4th and 7th of November to the 26th; and all other Causes on the Lists for the 4th and 7th of November will be taken from day to day until they are tried.

Undefended Causes only will be taken on Nov. 22d.

Short defended as well as undefended Causes entered for the Sitting on November 23d, will be tried on that day, if the plaintiffs wish it, unless there be a satisfactory affidavit of merits.

Causes standing over with judgment of the Term in Middlesex will be taken on the 26th November; and in London any defended Causes specially appointed on the 27th of November.

## Common Pleas.

In Term.

MIDDLESEX.

LONDON.

Friday .. Nov. 8	Wednesday Nov. 13
Friday .. .. 15	Wednesday .. 20

## After Term.

MIDDLESEX.

LONDON.

Tuesday .. Nov. 26	Wednesday Nov. 27
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The Court will sit at Ten o'clock in the forenoon on each of the days in Term, and at half-past Nine precisely on each of the days after Term.

The causes in the list for each of the above Sitting Days in Term, if not disposed of on those days, will be tried by Adjournment on the days following each of such Sitting days.

On Wednesday the 27th of November, no causes will be tried, but the Court will adjourn to a future day.

**Sychequer of Pleas.***In Term.***MIDDLESEX.**

First Sitzings. ....	Wednesday. ....	Nov. 6
By Adjournment } (if necessary) ..	Thursday. ....	7
Second Sitzings. ..	Friday. ....	15
By Adjournment } (if necessary) ..	Saturday. ....	16
	Monday. ....	18

**LONDON.**

First Sitzings. ....	Monday. ....	Nov. 11
Second Sitzings. ..	Thursday. ....	21
By Adjournment } (if necessary) ..	Friday. ....	22

*After Term.***MIDDLESEX****LONDON.**

Tuesday .. Nov. 26	Wednesday Nov. 27
	(to adjourn only.)

The Court will sit during Term at Ten o'clock.

**MASTERS EXTRAORDINARY IN CHANCERY**

From 24th September to 18th October, 1839, both inclusive, with dates when gazetted.

Johnson, Thomas, Midhurst, Sussex. Oct. 1.

Muskett, John, Diss, Norfolk. Oct. 8.

**DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.**

From 24th September to 18th October, 1839, both inclusive, with dates when gazetted.

Barber, John, and Thomas Pasfield Davidson, [no residence gazetted], Attorneys and Solicitors. Sept. 24.

Bevan, William, and M. Brittan jun., [no residence gazetted], Attorneys and Solicitors. Oct. 1.

Sorby, James, and James Footitt, Sheffield, York, Attorneys and Solicitors. Oct. 11.

**BANKRUPTCIES SUPERSEDED.**

From 24th September to 18th October, 1839, both inclusive, with dates when gazetted.

Brierley, Joshua, Shaw in Crompton, Prestwich-cum-Oldham, Lancaster, Cotton Spinner and Waste Dealer. Oct. 1.

Jackson, Charles, Macclesfield, Chester, Silk Throwster. Oct. 11.

**BANKRUPTS.**

From 24th September to 18th October, 1839, both inclusive, with dates when gazetted.

Ashe, John, sen., Portwood, Brinnington, Chester, Cotton Spinner and Manufacturer. Coppock & Co., Stockport; Coppock, Cleveland Row, Saint James's. Sept. 27.

Albert, Dominique, Cadishead, Lancaster, Manufacturing Chemist. Milne & Co., Temple; Potter, Manchester. Sept. 27.

Ashe, John, jun., Stockport, Chester, Cotton Spinner and Manufacturer. Abbott & Co., Charlotte Street, Bedford Square; Messrs. Benett, Manchester. Sept. 27.

Albrecht, John Henry Charles, Fenchurch Street, London, Spice Broker. Lackington, Off. Ass.; Wilkinson & Co., Queen St., Cheapside. Oct. 8.

Bebbington, Creasy, Burslem, Stafford, Jeweller and Clock and Watch Maker. Taylor & Co., Shelton, Staffordshire Potteries. Bower & Co., Chancery Lane. Oct. 1 and 4th.

Beckett, Samuel and John Beckett, Audlem, Chester, Drapers. Hampson, Manchester; Adlington & Co., Bedford Row. Oct. 4.

Banks, Charles Matthews, Handsworth, Stafford, Plumber, Glazier and Painter. Chaplin, Gray's Inn Square; Harrison, Birmingham. Oct. 15.

Cort, Arthur, and Thomas Harrison, Blackburn, Lancaster, Cotton Spinners. Wiglesworth & Co., Gray's Inn. Wilkinson, Blackburn. Oct. 8.

Davis, George, Chowbent, Atherton, Leigh, Lancaster, Brass and Iron Founder. Winstanley, Manchester; Milne & Co., Temple. Sept. 27.

Dennis, John, Devonport, Devon, Baker. Makinson & Co., Temple; Ramsey, Devonport. Oct. 1.

Dickinson, Swift, Leeds, York, Draper. Holme, Leeds; Messrs. Bennett, Manchester; Richards, & Co., Lincoln's Inn Fields. Oct. 1.

Dalby, Richard, Great Malvern, Worcester, and of Kidderminster, in the same county, Miller. Gatty & Co., Red Lion Square; Cresswell, Birmingham. Oct. 11.

Denbigh, William Wade, Bradford, York, Woolstapler. Hawkins & Co., New Boswell Court; Morris & Co., or Busfield, Bradford. Oct. 15.

Elsworth, Ephraim, Kirkstall, Leeds, York, Worssted Spinner. Hawkins & Co., New Boswell Court, Lincoln's Inn; Atkinson & Co., Leeds. Oct. 4.

Elliott, William, Wakefield, York, Corn Factor. Adlington & Co., Bedford Row; Taylor & Co., Wakefield. Oct. 4.

Elliott, Stephen, and John Allen, Wakefield, York, Corn Factors. Adlington & Co., Bedford Row; Taylor & Co., Wakefield. Oct. 11.

Fitch, Thomas, Leadenhall Street, London, Cheesemonger. Edwards, Off. Ass.; Messrs. Oldershaw, Tokenhouse Yard. Oct. 1.

Gibb, Henry William, Liverpool, Ship Owner and Merchant. Worthington & Co., Liverpool; Taylor & Co., Bedford Row. Sept. 27.

Gray, Thomas, Tunstall, Wolstanton, Stafford, Grocer. King, Furnival's Inn; Cooper, Tunstall, Staffordshire Potteries. Oct. 8.

Henderson, James, Theobald's Road, Bedford Row, Baker. Groom, Off. Ass.; Boydell, Queen Street. Sept. 27.

Hague, William, and Samuel Hague, Manchester, Commission Agents and Yarn Merchants. Cooper, Manchester; Adlington & Co., Bedford Row. Sept. 27.

Harvey, Samuel, Wellingore, Lincoln, Maltster and Corn Merchant. Scott & Co., Lincoln's Inn Fields; Moore, Lincoln. Oct. 4.

Humphreys, Charles, Bear Lane, Southwark, Surrey, Timber Merchant. Johnson, Off. Ass.; M'Leod & Co., London St., Feuchurch St. Oct. 8.

Hague, William, Samuel Hague, and William Shatwell, Manchester, Commission Agents. Johnson & Co., Temple; Hitchcock, or Atkinson & Co., Manchester. Oct. 8.

Holder, Samuel Bateman, Bread Street, Cheapside, Manchester Warehouseman. Lackington, Off. Ass.; Turner & Co., Basing Lane. Oct. 15.

Hunter, John, Salford, Lancaster, Licensed Victualler. Sale & Co., Manchester. Messrs. Baster, Lincoln's Inn Fields. Oct. 15.

Holt, John, Manchester, Banker. Hampson, Manchester; Adlington & Co., Bedford Row. Oct. 18.

Howie, James, Manchester, Merchant and Commission Agent. Makinson & Co., Temple; Atkinson & Co., Manchester. Oct. 18.

Innes, John Rose, Fenchurch Street, London, Merchant. Groom, Off. Ass.; Turner & Co., Basing Lane. Sept. 27.

Iron, Oliver Springett, Blackfriars Road, Surrey, Chemist & Druggist. Groom, Off. Ass.; Norris & Co., Bartlett's Buildings. Oct. 1.

Key, Wm., Bread Street, Cheapside, Linen Draper. Johnson, Off. Ass.; Sole, Aldermanbury. Oct. 4.

Kewell, Barton, Vauxhall Bridge Road, Middlesex,



# DIGESTED INDEX

TO THE

## CASES REPORTED IN VOLUME XVIII.

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### ANNUITY.

An annuity was granted in 1835, and all the deeds properly enrolled. In 1837 the grantor and grantee entered into a new agreement, which was indorsed on the old deeds, and by which the annuity was reduced in amount from 180*l.* to 150*l.*, but instead of being redeemable at pleasure, was not to be redeemed within five years. There was no fresh enrolment: Held, that this agreement constituted a new annuity, that it did not fall within the 10th section of the 53 G. 3, c. 141, but within the second section of that statute, and that for want of a fresh enrolment the annuity was void. *Earle v. Brown* . . . Page 124

### APPEAL.

By the operation of the 1 Geo. 4, c. 31, an appeal against a rate imposed on the parish of Bridgwater, would have lain to the quarter sessions of the county, that borough not having, according to the provisions of the statute, a sufficient number of justices in the borough sessions to decide on such appeal. By the effect of the 5 & 6 W. 4, c. 76, a part of the parish of Bridgwater was taken out of the borough. Since that act the borough has had more than the number of justices required by the 1 Geo. 4, c. 31, to decide on an appeal against a rate. Held, that as before the Municipal Corporation Act, the whole borough was with respect to rates, subject to the jurisdiction of the county quarter sessions, the portion of the parish dissevered from the borough by that act, continued subject to such jurisdiction notwithstanding the increase in the number of the borough justices. *The Queen v. The parish of Bridgwater* . . . 157

### APPORTIONMENT.

A lunatic's estates in fee were let by parol agreement from year to year, the rents payable half-yearly, at Lady day and Michaelmas, and the lunatic died in June: Held, that the proportion of the half-year's rent from the last Lady day before the lunatic's death up to the day of his death, was not apportionable under the act 4 & 5 W. 4, c. 22. *Re Markby* . 299

### APPRAISEMENT.

An appraiser may maintain an action for work and labour in preparing an appraisement, although he has not delivered the appraisement within fourteen days after making the same, according to the provisions of the 46 Geo. 3, c. 43, s. 8. *Saunders v. Morgan* . 365

VOL. XVIII.—NO. 555.

### ARBITRATION.

1. Where the plaintiff sued the defendant for a sum actually due, and the latter pleaded a set off in reference to a claim subsequently accruing, and an order of reference was made four days before the sum mentioned in the set off became payable, "of all matters in difference between the parties, including the claim of the defendant in the set off," and the arbitrator awarded that the amount of the set off was not due at the time of the commencement of the action, but that it had since become payable, and ordered it to be paid: Held, that the award was good. *Petch v. Coulan* Page 59

2. Where by the agreement of reference the arbitrator was directed to take a view, and that view was taken, it is no objection to the award that it it not set out. *Spence v. Eastern Counties Railway* . . . 335

3. The defendant sought to set aside an award on the ground of the improper reception of evidence at a meeting not duly convened. It being sworn by the arbitrators that at a meeting subsequently properly held, they agreed to strike out the evidence, because they found that they had not given the notice required by the order of reference, and that they did not take it into consideration in making their award, and it appearing that the defendant attended before the arbitrators to support his case at subsequent meetings, the court refused to set aside the award. *Kingwell v. Elliott* . . . 93

4. An attachment for non payment of money pursuant to an award cannot be obtained by a person not a party to the reference, although the money is to be paid to him by the terms of the award. *Re Sheete* . . . 30

5. Circumstances in which it is held that notice of an enlargement by the umpire before the power to award was vested in him by the non agreement of the arbitrators, was sufficiently notified to the defendant, and where proof on the part of the defendant of his inability to perform the works latterly specified, would be sufficient to exempt him from the performance of the award in that respect. *Doddington v. Bailward* . . . 108

### ARREST.

1. Where a sheriff's officer arrested a defendant without warrant, and afterwards procured a warrant to be directed to him, but at the suit of another plaintiff, such arrest was held to be illegal, so as not to support a detainer in a third suit against the same defendant. If, how-

ever, a party is wrongfully arrested by one person, and while in such wrongful custody is arrested by a different person without collusion with the other, such second arrest will be good, notwithstanding the wrongfulness of the first. *Quære*, whether a second writ (the return of the first writ not being filed) can issue on a judgment more than a year old, without such judgment being previously revived by a *scire facias*. *Collins v. Yewens, Richards v. Yewens*. Page 205

2. Where on the trial of an action for an escape, it appeared that the agent of the plaintiff requested that the warrant might be made out to a certain officer, to whom he gave instructions, and whom he took in a phaeton to the place where the arrest was to be made, where he required him to execute the warrant in a certain manner: Held, that a nonsuit on the ground that the bailiff was the special bailiff of the plaintiff was rightly entered. *Doe v. Trye* . . . 142

3. In an action for a malicious arrest, proof of a rule to discontinue a suit on payment of costs, and of the taxation and payment of costs, is sufficient to substantiate an averment of the discontinuance of an action without the production of the judgment roll. *Watkins v. Lee* . . . 287

4. Where a defendant has been arrested under a judge's order, made under the provisions of the 1 & 2 Vict. c. 110, s. 3, and it is sought to procure his discharge, the motion should be to set aside the order, and not the *capias*. Such a judge's order cannot be supported by an affidavit of debt, by the indorsee against the drawer, which does not allege presentment and default by the acceptor. *Hopkinson v. Salambier* . . . 383

#### ATTORNEY.

1. In an action of debt on a penal statute a plea of not guilty puts in issue the whole of the facts necessary to make the penalty attach. Such a case is not affected by the new rules. In an action of debt on the 22 Geo. 2, c. 46, against a party for practising as an attorney at sessions, where he holds the office of deputy clerk of the peace, he must be distinctly proved to have been appointed to the office, and to have acted in it. The fact of his appearing to act as the general deputy of a principal, who is both town clerk and clerk of the peace, will not be sufficient to subject him to the penalty. *Faulkner v. Chevele* . . . 56

2. If an attorney is changed, and he gives up his client's papers to his client, without payment of costs, he cannot obtain an attachment for nonpayment of them. *Hendy v. Collett* . . . 30

3. Where a mistake has been made in the christian name of an attorney applying for admission, on his notice for admission, the court will allow the name to be amended. *Ex parte Dukes* . . . 31

#### BAIL.

The sureties in a bond given under the pro-

visions of the 1 & 2 Victoria, c. 110, are to be treated as bail, and may render their principal according to the same practice which would have been applicable in the case of bail. *Owston v. Coates* . . . Page 91

#### BANKRUPT.

1. *A.* being declared a bankrupt, petitioned the Court of Review and obtained a reversal of the adjudication. *B.* the petitioning creditor, applied to that court for a special case, for the purpose of appealing to the Lord Chancellor. The court offered him such a case as he conceived did not raise the question, and he refused it, and presented a petition of appeal without a special case: Held, that grounds were not laid for hearing the appeal otherwise than by special case; that the settling of a case was no ground for such appeal, and that it was not expedient to lay down any rule as to the circumstances in which the Lord Chancellor would hear an appeal except by special case. *Ex parte Stubbs, Re Geo. Hall* . . . 55

2. When a defendant has become bankrupt since the commencement of the suit, it is no ground for staying proceedings in the action, that the plaintiff has proved his debt under the fiat. Application should be made to the Court of Review or Great Seal. *Ransford v. Barry* . . . 448

#### BILL OF EXCHANGE.

1. Where an acceptor of a bill of exchange pleaded to an action brought against him by an indorser, "that the drawer did not at the time of making the bill, nor of the acceptance thereof, pay the defendant the sum of 47l., which was the consideration for which the bill purported to be given," the Court granted a rule to set aside such plea with costs, treating this as a plea which was manifestly absurd. *Knowles v. Burward* . . . 12

2. The Court possesses a power to set aside a plea which is not an issuable plea, although the defendant was not at the time of pleading it under terms to plead issuably. But the Court will not exercise the power unless the plea is manifestly absurd. A plea by the acceptor of a bill to an action by the indorser, that the defendant had no notice of the indorsement, nor did he after the indorsement promise to pay the bill, nor did the plaintiff pay the consideration to the indorser, was not treated as absurd. *Horner v. Keppel* . . . 12

3. Two persons taking a bill which appeared to be accepted by *A.*, went to the house of *A.* and shewed it to him, and he said that it was his acceptance. Upon the faith of this representation, one of them discounted it, and it was regularly indorsed to him. The bill was not paid, and he brought his action upon it against *A.* The defendant pleaded that he did not accept, and the defence set up was, that the bill had been accepted by *A.*'s son as his own bill. The learned Judge who tried the cause told the jury that a person might become liable as acceptor by accepting a bill

in his own hand-writing, by authorizing another to accept it for him, or by ratifying such acceptance, though made without his prior authority, and left it to them to say whether in fact *A.* had made himself liable in any of these three ways: Held, that the direction was right, and that the Judge was not bound to leave it to the jury to say whether *A.*'s son had accepted the bill for himself. *Ansell v. Andrews* . . . . . Page . 106

CERTIORARI.

In the case of the removal of an indictment by *certiorari* from the quarter sessions, the defendant's sureties are liable to pay the costs of the prosecutor, although the statute 5 W. & M. c. 11, does not expressly direct it to be done, and there is no undertaking to that effect in the recognizance. *Re v. Besant* 398  
See PRACTICE (C. L.) 2.

CHARITY.

The Court has no jurisdiction on petition to order funds subscribed for supporting one charity to be transferred to another. *Quære*, whether it has such jurisdiction even upon information, if opposed by any of the parties contributing to the charity. *In re Reading Dispensary* . . . . . 156

COSTS.

1. A petition to apply the great seal to a patent having been opposed unsuccessfully, and the patentee, after establishing his title having asked for costs, the Lord Chancellor first doubting his jurisdiction, after consideration ordered the costs. *Ex parte Cutler* . 317

2. To a bill filed for accounts of a partnership business, a defendant answered, admitting possession of some documents relating to the accounts, and stating that others were in possession of another person for the benefit of all the partners. Neither that person nor some of the partners were made parties to the suit. Held, upon motion for production of both sets of documents, that though the plaintiff was entitled of course to those in possession of the defendant, yet failing in the other part of the motion, the plaintiff should pay the costs of the whole as being a mere experiment. *Murray v. Walter and others* . . . . . 140

3. Where an official document is required to be produced in evidence, the Master may properly allow in taxation a sum charged in respect of the attendance of the officer of the Court who produces it. The Master may also properly allow for the attendance of witnesses who are subpoenaed to translate old records. *Ashton v. Smith* . . . . . 107

4. A plaintiff may quash his writ of *sci. fu.* on a judgment without paying costs of discontinuing proceedings previously irregularly commenced on the judgment. *Oliverson v. Letour* . . . . . 29

5. The defendant having tendered a sum of money at the commencement of the suit, the plaintiff refused to accept it, but subsequently on its being paid into Court, he took it out: Held, that he was *prima facie* liable to the

costs from the time of the tender, but that the reason of the refusal might be explained by its being shewn that the amount of damages incurred had not been ascertained. *Ackwood v. Read* . . . . . Page 447

6. Where an action of trespass is brought against two defendants who appear separately by two attorneys, but at the trial by the same counsel, and a verdict is found in favour of one and against the other, the former is entitled to half the costs of the trial only. *Bartholomew v. Stephens* . . . . . 448

7. Where in an action for an infringement of a patent, the defendant succeeded on the substantial issue in the cause, the Court held that he was entitled to the costs of that issue, and the general costs of the cause; the 74th rule of H. T. 2 W. 4, not being affected by the statute 5 & 6 W. 4, c. 83, s. 5. *Losche v. Hague* . . . . . 287

8. In a suit for the administration of an intestate's estate, some of his next of kin, not parties to the cause, went before the Master under the usual decree and proved their pedigree and title. Held, that they were entitled to their costs out of the estate. *Hutchinson v. Freeman* . . . . . 476

DEBTOR AND CREDITOR.

Circumstances in which the Court dismissed so much of a bill as asked to set aside a deed by which a creditor obtained from his debtor security for payment on the death of the debtor, but ordered the creditor to account for the debtor's estate which came to his hands, by procuring administration of the estate to be granted to himself, he thereby becoming a trustee for the other creditors. *Link v. Stalord* . . . . . 380

EJECTMENT.

1. Service in ejectment having been effected on the son of the tenant on the premises, and the attorney of the tenant having afterwards expressed his intention to enter an appearance, the Court granted a rule *nisi* for judgment against the casual ejector. *Doe d. Smith v. Roe* . . . . . 31

2. In an ejectment for the recovery of a dissenting chapel, a service on a trustee, and sticking up a copy on the premises is sufficient to obtain judgment against the casual ejector. *Doe d. Grindley v. Roe* . . . . . 126

3. Where in ejectment a tenant residing abroad had been served, the Court granted a rule for judgment against the casual ejector. *Doe d. Daniell v. Woodruff* . . . . . 287

4. In an action of ejectment, an application being made for the discharge of the defendant under the Small Debts Act, notice of the motion having been given to one of the two lessors of the plaintiff, and the other not being to be found, the Court granted a rule absolute, in the first instance. *Doe d. Smith v. Payton* 319

5. Where in an action of ejectment to recover possession of a dissenting chapel, service on the trustees and at the house, was effected, it was held sufficient for a rule *nisi* for judgment.

ment against the casual ejector, and service of the rule on the trustees was held sufficient for a rule absolute. *Doe d. Gray v. Roe* Page 319

6. Where a motion is made that the tenant shall enter into the undertaking and recognition referred to in 1 Geo. 4, c. 87, s. 1, the affidavit must shew that the tenancy was determined by a regular notice to quit. *Doe d. Topping v. Boast* . . . . . 366

7. The Court will not grant summary relief to a tenant in an action of ejectment, on a forfeiture for non performance after notice of a covenant to repair. *Doe d. Mayhew v. Ashby*. 27

#### EVIDENCE.

1. A bill prayed relief against a written instrument, alleging that it was obtained by fraud, or that a verbal agreement alleged to have been the consideration might be enforced. Held, under the circumstances, that the allegations of fraud were not proved, and the bill so far as it asked to give effect to the verbal agreement was dismissed with costs. *Mortimer v. Fraser* . . . . . 489

2. The written statement of proceedings taken before a magistrate under the 7 Geo. 4, c. 54, is the best evidence, as well in the individual case in which they are taken, as in collateral proceedings, whether civil or criminal. *Leach v. Simpson* . . . . . 383

3. The plaintiff declared that the defendant contracted to build for him a certain booth or building, according to plans agreed upon, for 20*l.*, the same to be erected by the 28th June, and at the trial it was proved that the contract was to erect certain seats or tables for 25*l.* to be completed four or five days before the coronation: the defendant had pleaded non assumpsit, and that the contract was rescinded; Held, that the judge at nisi prius might amend the record according to the contract proved. *Ward v. Pearson*. . . 492

4. Where to an action on a bill or note, the defendant pleads no notice of dishonor, the plaintiff must prove an actual notice, and mere knowledge is not sufficient. In a case where the notice is not so proved, unless it is admitted that the money is due, the bill will not be evidence of an account stated. *Bird v. Legge* . . . . . 464

5. A document being identified by the defendant at a judge's chambers, but not annexed to the affidavit, and filed with it, the plaintiff is entitled to inspect and copy it, even though it be sworn to furnish an answer to the action. *Tebbutt v. Ambler* . . . . . 319

6. The contents of a deposition made by a servant of a petitioning creditor, as to an act of bankruptcy committed by a trader, may be used by the assignees of that trader against the petitioning creditor, though the party who made it is alive and could have been produced on the trial. Such an affidavit is not like a deposition in a suit in Chancery, or the examination of a witness in a court of law, and can therefore be employed against the party who has previously used it for his own advantage. *Gardiner and another, Assignees of Strutt v. Mault* . . . . . 397

#### EXAMINATION OF ARTICLED CLERK.

An articled clerk cannot be examined before the termination of his five years' service. *Ex parte Bartlett* . . . . . Page 335

#### EXECUTORS.

*J. W. F.* and two others were appointed executors and trustees of a will. *J. W. F.* did not prove the will: the other executors did prove, and one took on himself the whole management, and put the estate of his testator into an agency house, of which *J. W. F.* was a partner. *J. W. F.* retired from that partnership, and afterwards acted in execution of the trusts of the will, in applying funds transmitted to him by one of the executors who proved. The agency house failed, and the acting executor kept out of the jurisdiction. Upon a bill to make *J. W. F.* liable to the legacies in the will: Held, that he was not liable nor his estate. *Lovely v. Fulton* . . . 122

#### FORMA PAUPERIS

1. When a plaintiff desires to be admitted to sue in *forma pauperis*, and by *prochein amy*, the two objects may be gained by one motion. Counsel's certificate of a pauper plaintiff having a good cause of action, is intended for the information of the Court, and a rule admitting a plaintiff to sue as a pauper need not be drawn up on reading such an instrument. *Bryant v. Wagner*. . . . . 302

2. A pauper admitted to sue in *forma pauperis* may sue by his next *ami*, the requisition of the statute being complied with. *Bryant v. Wagner* . . . . . 126

#### FRAUDS (STATUTE OF).

1. Where a debt being due from one *W.* and the defendant writes in the following terms, "W. being again disappointed, and you expressing yourself as inconvenienced for the money, I enclose you his acceptance, payable here at two months. You may put your name to it as drawer and may safely pay it away." "I never put my name to bills: respectable professional men never should, but I will see it paid for W." Held, that a sufficient consideration appeared on the letter to make an action maintainable on its terms. *Emmett v. Kearns* . . . . . 92

2. It is not necessary that a defence of no contract in writing under the statute of frauds shall be specially pleaded. *Batterman v. Hayes*. . . . . 367

#### HABEAS CORPUS.

The defendant being in custody under an order of the Lords of the Admiralty, the Court refused to grant a writ of *habeas corpus* to bring him up, to charge him in execution. *Jones v. Dancers* . . . . . 190

#### HUSBAND AND WIFE.

1. Where a husband is possessed of a term of years in right of his wife, he may bring ejectment against the under tenant either in his own name or jointly with his wife. *Doe d. Penfold v. Conway* . . . . . 364

2. A lease for years being made to the plaintiff and his wife, the former brought an action

for injury done to his reversionary interest, in respect of land which he had underlet. Held, that the action was properly brought by the plaintiff alone. *Wallis v. Harrison*. Page 493

INFANT.

When a single woman, who has been appointed guardian of an infant, marries, the proper course is to direct a reference to the Master, on petition of the infant's next friend to name a new guardian, with liberty to the former guardian to propose herself. *Reg. v. Gornall*. . . . . 219

INJUNCTION.

1. A suit was instituted in a foreign court to adjudicate on real property within its jurisdiction. Another suit was instituted in this country, to administer a will and carry into effect the trusts of a settlement of the real property in the foreign country; all the parties to both suits being within the jurisdiction here. An injunction was granted to restrain the parties from proceeding in the proper court, without denying its jurisdiction to decide the subject in dispute there, on the ground that, as this court had undoubted jurisdiction over part of the subject matter of the suit, and over the parties, all being within the jurisdiction, and it was probable it might be able to adjudicate on the whole subject, it was not expedient to allow two suits to proceed to decisions, which, if carried out to the ultimate resort, might come in conflict. *Bunbury v. Bunbury* . . . . . 411

2. The third of the general orders issued on the 9th of May, 1839, entitling a plaintiff, after amending his bill, to move for an injunction to stay proceedings at law upon affidavit of the truth of the amendments, in case the defendant does not plead, answer or demur to the bill within eight days after appearing to it, is not applicable to cases that occurred anterior to the date of the orders. *Rurson v. Samuel* . . . . . 334

INSOLVENT.

1. *A.*, being in insolvent circumstances, offered his creditors a composition of 8s. in the pound. *B.*, one of the creditors, refused, but afterwards made a secret agreement with *A.*, to be secured the full amount of his debt by bills for the difference. *B.* then signed the composition deed. The bills were given and afterwards paid: Held, that *A.* could not recover back the amount as money had and received to his use; and that it made no difference whether he paid the bills in consequence of an action brought against him on them, or without such action being brought. *Wilson v. Roy* . . . . . 42

2. In an action on bills or notes where a defendant sets up his discharge under the Insolvent Act, and the question turns on the sufficiency of the notice given to the creditor, the jury must have their attention directed not only to the 40th section of the 7 G. 4. c. 57, (the Insolvent Debtors' Act) which prescribes the sort of notice to be given to the creditor,

but also to the 63d section of that statute, which declares that the prisoner shall have the benefit of the statute unless in his description he has been guilty of "any culpable negligence, fraud, or evil intention." *Frampton v. Champneys* . . . . . Page 301

INTERPLEADER.

1. Where a party has obtained a verdict in proceeding under the Interpleader Act, 1 & 2 W. 4, c. 58, he must enter up judgment on an order of the Court according to the provisions of the 7th section of that statute. He must not sign judgment in the ordinary manner. *Dickinson v. Eyre* . . . . . 189

2. *Quære*, whether equitable claims are within the meaning of the Interpleader Act. *Putney v. Tring* . . . . . 447

3. The Court can relieve the sheriff under the Interpleader Act, where the claimant is an infant. *Claridge v. Collins* . . . . . 414

JUDGMENT.

1. A plaintiff having given a peremptory undertaking to try at the first practicable sitting of the Sheriff's Court, and it appearing that the sheriff appointed Courts only on application for the trial of particular causes: Held that it was the plaintiff's duty to take the proper means to procure the trial of the cause before the defendant procured judgment absolute. *Sell v. Adams* . . . . . 302

2. The 6th section of the 19 G. 3, c. 70, is not intended to apply to cases where judgment has been given in an inferior court not of record. Therefore where, in a return to a writ of false judgment, the sheriff stated that the plaintiff in error had not given security, it was held that the return was bad, and was quashed. *Brookes v. Longdon* . . . . . 14

LANDLORD AND TENANT.

1. An agreement to take a lease, the landlord putting the premises in repair. Tenant took possession, and on his urgent application, the repairs were made after much delay, and a lease was tendered, containing certain covenants in the landlord's lease: Held, under the circumstances, that the delay in doing the repairs and the tenant's previous ignorance of the covenants, could not excuse him from accepting the lease, and specific performance was decreed. *Nash v. Cochrane* . . . . . 333

2. Where a landlord of furnished apartments, by his own misconduct, justifies his tenant in abruptly quitting his house, the tenancy being for a limited period, he cannot recover rent for the whole term, but for the time only during which there was an actual occupation of the apartments. *Kirkman v. Jervis* . . . . . 414

LEGACY.

A testator gave *A.* the sum of 100*l.*, "which said sum is owing to me by bond from *A.*'s father." In a suit by *A.* against the executor for the legacy, an affidavit by *A.*'s



ather was offered in support of the answer, admitting the existence of the bond, but stating circumstances which went to shew it was fraudulent: Held, the legacy was specific, and that the affidavit was not admissible on the ground of interest; but whether the bond was good or not, further inquiry was directed before the Master. *Davis v. Morgan* Page 41

## LIBEL.

The printer of any publication alleged to contain defamatory matter is subject to proceedings in the Courts of Law in respect of such publication, though he made it under the express order and direction of the House of Commons. A Court of Law has authority to determine whether the House of Commons possesses such a privilege as can defend a person who has acted under it from his common law liability in respect of his having so acted. *Stockdale v. Hansard* . . . 444, 460

## LIEN.

The question whether there has in fact been a delivery of goods, may properly be left to the jury, to be decided by the particular circumstances under which the parties dealt with each other. 2.—The existence of a right of lien over the goods, is only a circumstance to be taken into consideration, but is not a criterion by which to decide whether there has been a complete delivery of goods sold. *Wright v. Percival* . . . . . 285

## LIMITATIONS (STATUTE OF).

1. Where the trustees of a road purchased, for the purposes of the trust, some land and buildings from the owner, and at the same time took different quantities of stone from his quarry, and paid for the land and buildings, but did not pay for the stone, and no distinct and specific contract for taking the stone was proved,—Held, that the transactions were independent of each other, and that the taking of the stone was like the ordinary case of purchasing goods; and that the right of action was complete on each delivery, and consequently that the Statute of Limitations was an answer to an action for any part of the stone delivered beyond the period of six years before action brought. *Carter v. Carr* . . . 391

2. The operation of the Statute of Limitations is not prevented by the 52 G. 2, c. 165, s. 54, which gives creditors a remedy against the future estate of insolvents discharged under its provisions. *Browning v. Paris* 493

## LUNACY.

1. If the committee of a lunatic will take on himself to lay out money in respect of the lunatic's estate, without obtaining the previous sanction of the Court, he shall have to pay the costs of inquiring whether such outlay was necessary, before it can be allowed in his account. *In re ———* . . . . . 333

2. Two petitions for a commission of lunacy, one by the supposed lunatic's wife, who expressed her intention to limit the pending of the lunacy to a recent period; the other by the lunatic's brothers, wishing to carry the finding back to a remoter period: Held, that the brothers, on whom lay the affirmative, ought to have the carriage of the commission. *In re Whittaker* . . . Page 139

3. A committee of a lunatic ought, before bringing or defending an action on behalf of a lunatic, to have the sanction of the Court. *In re ———* . . . 235

4. The real estate of a lunatic is not liable, under the act 3 & 4 W. 4, c. 104, or otherwise, to the payment of debts contracted on his behalf, during his lunacy, or to the payment of the expences of his funeral. *Carter v. Beard* . . . 218

5. The real estate of a lunatic being in want of repairs, the expense of the repairs was ordered to be paid out of the personal estate, consisting of money in Court arising from the rents of another estate, the next of kin of the lunatic objecting. *In re Badcock* . . . 187

6. The lunacy of a partner is sufficient ground in equity to dissolve the partnership, and direct the accounts of the business to be taken up to the filing of the bill. Where the partner is declared lunatic under a commission, the Court will not require further proof by directing an inquiry before a master. *Milne v. Bartlett* . . . . . 89

## MANDAMUS.

1. The auditors of a parish vestry appointed under a general act, served on the clerk of certain church trustees, appointed under a local act, a notice to produce the accounts of the trustees before the auditors on the 2d of April following. One of the days included in the notice was Sunday. The regular monthly meeting of the trustees took place on the Thursday following, when the clerk might have submitted the notice to them for their inspection: Held, that the trustees having disregarded this notice, the auditors were not entitled to a mandamus to compel them to produce their accounts. *The Queen v. The Church Trustees of St. Pancras* . . . 221

2.—1. This Court will not by mandamus compel the lord of a manor to accept the surrender of a person authorised by an order of the Court of Chancery, under the provisions of the 11 G. 4 & 1 W. 4, c. 60, to convey an estate where the person having the legal estate is dead or unknown, but will leave the Court of Chancery to carry into full effect its own order. 2. *Quere* whether this Court has jurisdiction in such a case. 3. *Quere* also whether the statute refers to copyhold lands? *The Queen v. J. Pitt* . . . . . 237

3. If on an information preferred before a magistrate, he exercises his discretion as to dismissing it, the Court will not interfere to compel the magistrate to return the proceedings in order to review his decision. *Ex parte the British and Foreign Patent Invention Company* . . . . . 30

NOTICE OF ACTION.

1. Where an act provides that for any thing done under its provisions no action shall be maintained without notice first given; parties who have *bond fide* intended to proceed under its provisions are entitled to such notice, though they may not be so strictly within the words of the act as to be enabled to render it a complete defence for themselves. 2. The clerk of trustees, appointed under an act, is, for such a purpose, in the same situation as the trustees, and is entitled to notice. 3. A letter demanding the names of persons, and threatening legal proceedings, is not a notice of action. The notice must be distinct and unequivocal, so as to give the party the opportunity of determining whether he will tender amends or defend himself. *Norris v. Smith* . . . . . Page 89

NUISANCE.

1. Where a party defends himself against an action for a nuisance by a claim which in substance amounts to a prescription for an easement, his plea must distinctly shew that the thing claimed is an easement, that is, a right of accommodation over another man's land. *Quere*, whether the claim of having a mixen or dung-heap on the defendant's own ground, the offensive smell passing over the plaintiff's land, can be supported as a claim of an easement? *Flight v. Thomas* . . . . . 189

2. Where, in an indictment for stopping up a river by throwing mud into its course, it appeared that the acts complained of were permanent, the Court refused to grant a rule for particulars of the dates of the acts complained of, but granted it only as to the act itself. *Reg. v. Flower* . . . . . 319

OUTLAWRY.

It is necessary that a motion relating to an inquisition in outlawry should be made through the medium of one of the side clerks; the return being made into the Queen's Remembrancer's Office. *Re Otto Manners* . . . 383

PARTNERSHIP.

The personal representative of a deceased partner filed a bill for an account against some only of the other partners, one of whom by his answer admitted possession of some of the accounts, and that more were in possession of the common agent of all the partners, who were not very numerous, and their names were communicated to the plaintiff: Held, that the plaintiff was not entitled to the production of the accounts in the agent's possession, without making all the partners parties to the suit. *Murray v. Walter* . . . . . 395

PLEADING (EQUITY).

An action having been brought against an insurance company by the agent of the principal insurer, who was not a party to the action, the company filed a bill of discovery in aid of their defence, and made the insurer a defendant thereto; he demurred: Held, that such a bill would not lie against a person who was not a party to the action. *Irving v. Thompson* . . . . . 492

PLEADING (COMMON LAW).

1. In an action on a bond not to enter into the service of another for two years after quitting the service of the plaintiff, the declaration must shew some consideration for such an obligation. A consideration for it cannot be presumed. *Hatton v. Parker* . . . . . Page 189

2. When issues in fact are joined upon a record upon which there has been judgment given on a demurrer, upon which the defendant desires to bring a writ of error, the Court will only allow those issues to be struck out, with liberty to restore them, where both parties consent. *Carden v. General Cemetery Company* . . . . . 93

3. The plaintiff declared in debt on a bond against the defendant as *W. F. B.*, sued as *W. B.*; the defendant pleaded *non est factum*. It was proved at the trial of the cause that the bond was executed by the defendant as *W. B.*, by which name he was well known: Held, that there was no variance, and that the bond was not void; and that the objection was not available under the plea of *non est factum*. *Williams v. Bryant* . . . . . 415

4. In an action of trespass *qu. cl. fr.* the defendant set up a general right to cross the land at all times, and for all purposes. The jury found a limited right at certain times and for certain purposes only: Held, that the finding could not be entered distributively under the new rules. *Higham v. Rabbett* . . . . . 383

5. Circumstances in which a plea was held ill for duplicity. A replication to such a plea held good as traversing the material allegation in the plea. *Hilton v. Swann* . . . . . 44

See BILL OF EXCHANGE; EVIDENCE.

PRACTICE (EQUITY).

1. The Master having refused an order for leave to amend the bill after six weeks from the time that the answer was to be deemed sufficient, the plaintiff appealed to the Vice Chancellor, before whom a motion to dismiss the bill, of which the notice was given in time, came to be argued at the same time, and his Honor granted leave to amend, and made no order on the motion to dismiss: Held, by the Lord Chancellor, that the Masters have no power to dispense with the strict letter of the general orders, and that the motion to dismiss was regular; but as the order to amend had been made, he would allow it to stand, but the plaintiff should undertake to speed the cause. *Lloyd v. Wait* . . . . . 105

2. After a defendant's answer was put in, the plaintiff obtained an order of course to amend his bill, and on the eighth day from the date of that order, the defendant moved that if the plaintiff should not amend within a week, his bill might be dismissed: Ordered, that the plaintiff amend within three weeks from the date of his order, in conformity with the practice of the Court of Chancery. (See 14th order, 1828 and 1831). *Fraser v. Palmer* 106

3. An order of reference to the Master to inquire which of two bills filed on behalf of an infant ought to be proceeded with, is properly obtained on a petition or motion of course; but if the application be made by special mo-

tion, with notice, the order will still be made, on payment of the costs of all the parties before the court. *Kelsey v. Larkin* Page 459

4. Where a defendant, committed for contempt in not answering, has been found by the Master on reference to him, under the act 1 W. 4, c. 36, s. 15, to be too poor to employ counsel and solicitor to prepare answers, and declines to apply to the Court to assign them, it is competent to the plaintiff to make the application. *Wheeler v. Cotterell* . 315

5. The time for answering a bill having expired, and an order having been made for delivery of papers to the defendants for the purpose of their answer, and an application having been made in their behalf to the plaintiff, to join in a commission to take their answers; they, instead of answering, filed exceptions to the bill for impertinence: Held, that the exceptions were irregular, and they were ordered to be taken off the file with costs. *Goodwin v. Clewley* . 236

6. Where a defendant in contempt for not putting in his answer, is reported by the master under the act 1 W. 4, c. 36, s. 15, to be unable from poverty to employ a solicitor, and declines to apply to the Court to assign him a solicitor to prepare his answer, the plaintiff is entitled to an order to take the bill *pro confesso*. *Crooke v. Coop* . 334

7. The Court will not give leave to amend his bill, to a plaintiff who has not taken any step in the prosecution of his suit for an unreasonable length of time after answer put in, and can give no satisfactory explanation of the delay. *Altree v. Holden* . 363

#### PRACTICE (COMMON LAW.)

1. The 32 Geo. 2. c. 28, which gives a prisoner the right to complain to the court of any abuse whatever practised towards him by the keeper of the prison, and authorises the court to give him relief upon such summary complaint and to award him compensation, and to punish the keeper of the prison, does not take away the prisoner's common law right of action for any such grievance. But it seems that if the prisoner had obtained a compensation upon a summary application, the court would not allow him afterwards to proceed by action. *York v. Chapman* . 141

2. An application to set aside a side-bar rule peremptorily commanding the return of a *certiorari*, comes too late if made after a rule for an attachment for disobedience has been applied for. If the conduct of the party obtaining the side-bar rule is an answer to his application, it should be brought before the court when that rule is served. If the application for an attachment for not returning a writ, is to be founded on the fact of the refusal of the party applying for the writ to pay the fees due in respect of making the return, it must be shewn that he was duly informed of the nature and amount of such fees. *The Queen v. Harland* 159

3. A summons taken out at chambers, need not state the date of the year; the specification of the day of the month is sufficient. *Solomon v. Nainby* . 460

4. Where a defective writ is re-sealed, it should be dated of the day of its being re-sealed. *Knight v. Warren* . Page 335

5. Where upon an application to set aside proceedings for irregularity, it is alleged in answer that it comes too late, in order that the fact of a previous application at chambers may be relied on, it must appear on affidavit, or the rule should be drawn up on reading the order made by the learned Judge. *Shugars v. Concannon* . 191

6. When a motion is made to set aside a *distringas*, the affidavits must be entitled in the same manner as the names of the parties are stated in the writ, although they are there incorrectly given. *Borthwick v. Ravenscroft* 190

7. A rule by a plaintiff to quash his own writ of *sci. fa.*, is *nisi* in the first instance, and not absolute. *Lynch v. Taylor* . 92

#### PRISONER.

1. Where the residence of the party at whose instance a prisoner is in custody for twelve months, cannot be found, he may be discharged under the 48 G. 3, c. 123, without serving the notice or rule. *Bradley v. Webb* 14

#### PROHIBITION.

1. In a suit in the Ecclesiastical Court, for the subtraction of tithes, the defendant set up by way of responsive allegation, a lease of the tithes in question, among others, from the plaintiff to certain persons therein mentioned. The Ecclesiastical Court was about to adjudicate on the libel and on the answer thus put in, when a prohibition was applied for: Held, that a prohibition would not lie, for that this allegation did not directly put the validity of the lease in issue; and that on the face of the proceedings there was nothing to shew that the Ecclesiastical Court was exceeding its jurisdiction. *Earl Beauchamp v. Turner* . 222

2. Where in a suit in the Consistorial Court for tithes the defendant pleaded a plea which raised a question beyond the jurisdiction of that Court, but afterwards waived it, the Court in that stage of the proceedings refused to grant a rule for a prohibition. *Cardew v. Cutley* . 303

#### SLANDER.

In an action for slander the declaration alleged that the plaintiff, who had been churchwarden, was charged with having spent between 2 and 300*l.* of the parish money, no one knew how, for the parish books had been destroyed and no vouchers had been produced; and that the defendant, when making the charge, asked whether such a person could be fit to be trusted with the parish money; and the *inuendo* was that the words imputed an indictable offence: Held, that the action was maintainable, though the words were uttered the day after the plaintiff quitted office, for that they did impute an indictable offence. *Ramsey v. Elmes* . 317

#### SPECIFIC PERFORMANCE.

Three persons, trustees for a public company, contracted in their own names as individuals for the purchase of mines, part of

the purchase money paid down, and part to be afterwards paid, with interest in the mean time; the property to be a security, and to be liable after notice; the purchasers discharged from personal liability. The purchasers were let into possession, and their company worked the mines, and deteriorated the property. The vendor, in a bill for specific performance, charged the individual purchasers as personally liable, on the ground of conduct, and also the members of the company in respect of their dealings with the property: Held, upon demurrers to the bill, that the three purchasers were liable for specific performance of the agreement; that they were not personally liable for the balance of the purchase money, for which the property sold was alone security to the vendor, on giving notice; and that the other individual members of the company were not at all liable. *Attwood v. Small* . . . . . Page 8

TENDER.

Where a debtor went to his creditor, and laying a sum of money on the desk, desiring him to take what was due: Held, a good legal tender. *Beran v. Rees* . . . . . 384

TITHES.

A customary payment of 4d. per acre yearly for ancient pasture land, always in pasture, from time of legal memory, may be a good modus in lieu of tithes in kind; but such a modus is bad, if the land has been ploughed, broken up, or meadowed within the time of legal memory, although again restored to pasture. Circumstances in which the Court will not direct any issue to try the validity of a modus. *Cooper v. Byron* . . . . . 220

TRESPASS.

Where, in an action of trespass, it appeared that the defendant, a constable, seized the plaintiff's goods (under an alleged distress for church rates) on one day, and gave notice that unless they were redeemed within five days they would be sold, and in the mean time he removed them into an adjoining county, and at the expiration of the five days brought them back and sold them: Held, that the seizure and removal and sale were distinct acts of trespass, and that under the 53 Geo. 3, c. 127, s. 12, an action might be brought within three months of either of them. Where a copy of the warrant of distress is demanded under the 24 Geo. 2, c. 44, the demand not specifying any time within which it is to be given, and if a time is mentioned different from that referred to in the statute, it is immaterial. *Collins v. Rose* . . . . . 462

TRIAL.

1. Where a notice had been served in time at the Secondary's Office, calling on the secondary to produce his notes of a trial which had taken place before him, and the answer given at the office was that the secondary was out of town, and would not return till after the regular time for moving for a new trial had expired; and where the attorney was

shewn the notes and copied them, and examined the copy with the original, and swore to its correctness, the Court permitted the motion for the new trial to be made on such copy. *Ellis and wife v. Mason* . . . . . Page 29

2. A cause having been tried by writ of trial, and execution having issued in vacation: Held, that the defendant might apply in the ensuing term to enter a suggestion to deprive the plaintiff of costs, and that a previous order to stay proceedings was unnecessary. *Johnson v. Veal* . . . . . 366

TRUST.

1. The practice of granting payments out of trust funds to parties claiming title thereto, to enable them to establish their titles, is not to be encouraged. *Pye v. Maule* . . . . . 121

2. A. delivered a box to B. in 1837, saying, "at my death, get the key from C. out of the iron chest, and if C. does not give it, break the box; it contains money, &c., it is for yourself after I am gone, but I shall want it from you every three months while I live". A. had the box sometimes from B. and returned it to her. On his death in 1838, she broke the box, C. refusing to give the key, and found a bill of exchange, payable to A. or bearer: Held, on demurrer to B.'s bill against C., and the drawer of the bill of exchange, that the delivery of the box was not a *donatio mortis causa*, nor such a trust as the Court would enforce. *Reddel v. Dobree* . . . . . 446

WILL.

1. A testatrix, in execution of a power, appointed 150*l.* a-year to her husband, part of the dividends on 10,000*l.* consols, or of the securities in which the same should be vested at her death; and so much as should not be necessary to be set apart for that purpose, she gave to J. R. B. The consols were sold out, and the proceeds vested on mortgage after the execution of the appointment, and remained so vested until testatrix's death, when it was called in: Held, that in whatever security the money should be again laid out, a sufficient sum should be set apart to produce the annuity of 150*l.* *Bullock v. Thomas* . . . . . 40

2. A bequest of the income of the residue of a testator's property of what kind soever to his wife for life, subject to certain weekly payments, and after her death to his son for his life, if he should survive her, with an expression of a desire that the son should enjoy absolutely all the residue, except money in the funds, which the testator wished to be divided, on the death of his wife, among the children of his son, on their attaining twenty-one: Held, that on the death of the wife, the son took for his life all the residue, including the money in the funds. *Bell v. Bell* . . . . . 268

3. A testator gave his daughter H. R. 25,000*l.* and a house A., and furniture, for her absolute use, but without liberty to sell or assign the same during her life. There was no gift over: Held, that this was an absolute gift. The same testator revoked by codicil a bequest given by his will to his wife, and instead thereof gave her 10,000*l.* for her life,

then to his daughter *H. R.*, and his house *B.* and furniture, &c. : in short, the whole of his property at his decease, except his carriages, &c., and it was his wish she should continue in either house and have the use of same during her life: Held, that the wife was entitled to the 10,000*l.* for her life; but it being uncertain whether she or the daughter was meant by the subsequent words, the gift of the residue was held void for uncertainty. *Newton v. Richards—Baker v. Newton* . 283

4. A testator gave his wife (subject to his debts, legacies, and legal liabilities), all the interest, rents, dividends, annual profits, use and enjoyment of all his real and personal estate for her life; and at her death he gave the residue of his real and personal estate to *A. B.* The wife received the rents and profits for thirty years, with the consent of *A. B.*, who was the executor, but then on a supposition suggested to him by *A. B.* that she had been receiving more than she was entitled to, she settled an account with him on that notion. Held, that the wife was entitled by the will to the income of the estate as left by the testator, and the settled account was set aside as being submitted to in ignorance. *Pickering v. Pickering* . 434

## WITNESS.

1. A person served with a *subpœna duces tecum* has no right to exercise his judgment on the question whether the documents required to be produced are admissible in evidence or not. The Court will not make a rule for an attachment against a witness for not obeying a *subpœna duces tecum* absolute in a case where no intended contempt of the Court is shewn, and where the party applying for the attachment cannot shew that he has suffered injury from the non production of the documents. But in such a case, though the rule for the attachment may be discharged, it will be discharged without costs. *The Queen v. Lord J. Russell* 300

2. The order of Lord Chancellor *Hardwicke*, directing that reasonable fees shall be paid to the officers of the Court of Chancery attending on *subpœna* in other Courts to produce rolls from the Court of Chancery, is a valid order. The senior clerk of the Petty Bag Office, when required to attend and produce the rolls kept at his office, is entitled to such fee. He may maintain an action for it, and may do so though he does not attend in person, and though the party requiring the production of the rolls had no notice that such fee was demandable. *Bentall v. Sidney* . 269

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